

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

AARON MALDONADO, *et al.*,

Plaintiffs,

V.

**MAMMOTH ENERGY SERVICES,
INC., COBRA ACQUISITIONS, LLC,
HIGHER POWER ELECTRICAL, LLC,
and 5 STAR ELECTRIC, LLC,**

Defendants.

Case No. 5:21-cv-00085

**APPENDIX IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT
EXHIBITS 1 THROUGH 6-A**

Dated this 2nd day of August, 2024.

PORTER H EDGES LLP

William R. Stukenberg
Texas Bar No. 24051397
Federal ID No. 55792
1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6611
Facsimile: (713) 226-6211
Email: wstukenberg@porterhedges.com

***Attorney-in-charge for Defendants
Mammoth Energy Services, Inc.,
Cobra Acquisitions, LLC,
Higher Power Electrical, LLC, and 5 Star
Electric, LLC***

Pursuant to Local Rule CV-7(c), Defendants file this Appendix in support of their Motion for Summary Judgment.

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DATED: August 2, 2024.

Respectfully submitted,

By: /s/ William R. Stukenberg
William R. Stukenberg, *Attorney-in-Charge*
Texas Bar No. 24051397
Federal I.D. No. 55792
PORTER HEDGES LLP
1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6611
Facsimile: (713) 226-6211
wstukenberg@porterhedges.com

*Attorney-in-Charge for Defendants
Mammoth Energy Services, Inc.
d/b/a Cobra Energy, 5-Star and
Higher Power Electrical, LLC*

Of Counsel:

M. Harris Stamey
State Bar No. 24060650
Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6619
Facsimile: (713) 226-6219
hstamey@porterhedges.com

Jamie L. Houston
State Bar No. 24097847
Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6608
Facsimile: (713) 226-6208
jhouston@porterhedges.com

Emil M. Sadykhov
State Bar No. 24110316
Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6720
Facsimile: (713) 226-6320
esadykhov@porterhedges.com
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that I filed the foregoing document in accordance with the protocols for e-filing through the CM/ECF system in the United States District Court for the Western District of Texas, San Antonio Division, on August 2, 2024, and therefore has been served upon all counsel of record in accordance with such e-filing protocols.

/s/ William R. Stukenberg
William R. Stukenberg

IN THE UNITED STATES DISTRICT COURT
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AARON MALDONADO, *et al.*,

Plaintiffs,

v.

MAMMOTH ENERGY SERVICES,
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HIGHER POWER ELECTRICAL, LLC,
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Defendants.

Case No. 5:21-cv-85

DECLARATION OF MARK LAYTON

I, Mark Layton, declare as follows:

1. My name is Mark Layton. I am over the age of eighteen (18). I have never been convicted of a felony or crime involving moral turpitude. I am fully competent to make this declaration. I have personal knowledge of all the facts stated herein or have derived these facts from a review of business records, and the statements herein are true and correct.
2. I am the Chief Financial Officer of Mammoth Energy Services, Inc., Cobra Acquisitions, LLC (“Cobra”) and Higher Power Electrical, LLC (“HPE”) (collectively “the Defendants”). I am aware of a lawsuit brought by Aaron Maldonado and others against the Defendants based on allegations that they, along with others, were not paid overtime for work performed on behalf of the Defendants.
3. Cobra is an infrastructure services company that provides maintenance and repair services to utilities. Cobra contacted the Puerto Rico Electrical Power Authority (“PREPA”) to offer its services after Hurricane Irma (category 5) and Hurricane Maria (category 4), devastated the island of Puerto Rico in September 2017. Both storms caused significant damage to the electrical grid and destroyed many buildings on the island.
4. As a result of the hurricanes, the infrastructure for an already decaying electrical grid was decimated. When Hurricane Maria hit Puerto Rico just a few weeks after Hurricane Irma, the additional catastrophic damage to the island was exacerbated by an enormous storm surge accompanied by high winds. The island of Puerto Rico had no power, approximately 95% of the cell service towers were down, and approximately 50% of the island was without running water. Sewage was running

through the streets of San Juan.

5. Restoring power was critical to beginning the recovery efforts. Without power, the island could not begin to repair the absolute devastation. The people of Puerto Rico experienced a humanitarian crisis that resulted in the death of over 2,900 people and damage in excess of \$90,000,000,000.00.
6. Shortly after the storm, Cobra executives met with Puerto Rican officials to offer assistance in repairing the electrical grid. On October 19, 2017, Cobra entered into a contract with PREPA to restore electricity.
7. Cobra began work immediately to launch this intense and logistically challenging work. This work included acquiring and deploying hundreds of bucket trucks and other work vehicles from ports across the country to Puerto Rico. Cobra was also tasked with securing and delivering the equipment necessary to perform the repair and restoration work, which was delivered to the island by barge and an Antonov, the largest aircraft in the world. Cobra also had to find and secure housing for the workers by chartering two large barges that could each sleep hundreds. Cobra also contracted with two affiliated companies, HPE and 5-Star Electric, LLC ("5-Star"), to provide the workers and equipment to perform the work. Time was of the essence given the humanitarian crisis and lives at stake.
8. An advance team arrived in Puerto Rico within days of the signing of the PREPA contract, and equipment and crews started arriving in late October and early November 2017. Cobra was in charge of the logistics, housing and security and 5-Star and HPE were responsible for recruiting personnel to perform the work and ascertaining how to pay the employees.
9. Keith Ellison, then-President of Cobra, developed the daily labor budgets for the various classifications of linemen who would be working in Puerto Rico. These budgeted amounts were then listed on the wage scale which was used to recruit workers. The wage scale was a target amount of compensation sufficient to begin recruiting workers to perform the work in a very demanding environment while maintaining some profit margin. The wage scale contained amounts ranging from \$600 to \$1,400 per day worked, or \$219,000 to \$511,000 annually. This was considerably more than linemen and similar laborers earn in the continental United States.
10. The day after creating the daily labor budgets and wage scale, Ellison, HPE, and 5-Star then turned to Mammoth Energy Inc. ("Mammoth Inc.") for assistance in developing a pay plan that would closely mirror the rates contained in the wage scale and comply with the FLSA. Mammoth Inc. is a sister company to Cobra, 5-Star, and HPE. Mammoth Inc. provides back-office support services, such as accounting and human resources services, to these subsidiaries for a fee pursuant to a shared services agreement. Mammoth Energy Services, Inc. is the ultimate parent company of Mammoth Inc., Cobra, 5-Star and HPE. Mammoth Energy

Services, Inc. does not have and never has had any employees.

11. Ellison informed me that it was my responsibility to figure out how to pay the employees and the details and mechanics of a pay plan. For his part, Ellison did not know the specifics of how the workers would be paid as he was focusing on the remaining logistical tasks to get the project moving, such as securing and deploying equipment.
12. To develop the pay plan, I directed Jeff Beagle, Vice President of Human Resources of Mammoth Inc., to confer with outside counsel to develop a compliant pay practice based on the daily labor budgets. Beagle is a human resources specialist with over ten years of experience, including experience with compliance with wage and hour laws. On October 19, 2017, Beagle contacted Steve Broussard, an employment law attorney with over twenty-five years of experience at the time and who had previously worked with Mammoth Inc. on other employment law issues to develop the pay plan. Beagle initially explored paying the employees based on a day rate. Broussard responded that we could do so, but we would have to pay overtime on top of the day rate—and he explained how the calculation of overtime on a day rate could be accomplished. After discussing a day rate plan with operational management, we quickly pivoted to an hourly plus overtime pay plan that would approximate daily rates contained in the wage scale provided that employees worked the anticipated weekly schedule.
13. Developing the hourly pay plan was an iterative process and Beagle created various spreadsheets with different pay plans which were circulated among the group. Ultimately a pay plan was chosen utilizing an anticipated schedule of seven days a week and 16-hour days. Using this schedule and the daily labor budgets for each position, we derived hourly rates for each position such that if linemen worked the anticipated weekly schedule and were paid the hourly and overtime rates, they would earn on average an amount that closely approximated the amounts contained in the wage scale. However, due to the hourly and overtime nature of the pay plan, a worker would never earn an amount close, or equal, to the daily amounts listed on the wage scale for any single day worked.
14. Seven sixteen-hour shifts per week is the standard weekly schedule in the industry for storm work. One of the reasons for a sixteen-hour shift is that under Department of Transportation (“DOT”) and Occupational Safety and Health Administration (“OSHA”) regulations, certain covered employees are not permitted to work beyond sixteen-hour shifts unless eight hours of rest time is provided. Although DOT and OSHA regulations are generally suspended during a national emergency, such as the emergency caused by Hurricanes Irma and Maria, the sixteen-hour limits are a natural cap on the hours worked per day. Additionally, safety concerns militated against allowing workers to work more than sixteen hours per day. Further, the nature of the operations being performed generally limited the work to daylight hours.

15. Because it was critical for HPE and 5-Star to immediately begin recruiting linemen to work in Puerto Rico, the wage scale was used to do so before the pay plan had been designed and implemented. Both HPE and 5-Star advertised the positions to candidates as providing a targeted amount of expected pay, subject to an offer letter and additional details that were being developed during the emergency situation that would be provided upon hire.
16. All employees ultimately hired were given offer letters informing them of the anticipated schedule and pay details, and they attended orientation seminars held in either Texas, Kentucky, or occasionally Puerto Rico. Employees filled out onboarding paperwork and were advised that they would be paid an hourly rate with overtime, and the target amount of their compensation would be based on 16-hour shifts, seven days per week. The orientation included information regarding safety, housing and related human resources materials. After orientation, the employees flew to Puerto Rico to begin work.
17. Employees generally worked a full seven days a week for a total of 112 hours (7 days x 16 hours per day). However, if an employee did not work the anticipated schedule, they would earn less than the daily amounts budgeted for the position as reflected on the wage scale. It is my understanding that Missy Davis in Human Resources at 5-Star asked Beagle what should be done in short weeks where employees were paid less than what had been budgeted for their position. Reflecting the fact that this scenario created an increase in profit margin, Beagle informed her that they could, but were not required to, pass the increase in profit margin along to the employees in the form of a discretionary bonus. The rationale was to keep the employees' morale and employee relations high through the tumultuous humanitarian crisis. In total, less than 2% of the workweeks included any discretionary payments. In many instances, Defendants did not make the discretionary payments. Such instances included circumstances where an employee missed work or was suspended for malfeasance. Employees generally worked the anticipated schedule and would typically only fall short of the targeted hours when the employee deployed to the island or ceased work for Defendants.
18. In the summer of 2018, Cobra entered into a subsequent contract with PREPA as the project moved from emergency response and power restoration to reconstruction. As a result, the compensation structure changed, effective July 23, 2018. The sixteen-hour shifts were replaced with twelve-hour shifts, and discretionary payments were no longer made. The project ended and HPE and 5-Star concluded operations in Puerto Rico by March 2019. Throughout the project, from inception to conclusion, not a single employee complained about the manner of their compensation, including any purported failure to pay overtime. My mobile number is listed on employees' pay stubs, and I received calls from employees about various issues, such as employment verification, but I never received any calls regarding any alleged failure to pay overtime or beliefs that employees were not being compensated appropriately. Similarly, Defendants were never notified by the Department of Labor or any other person or organization that the

compensation structure was purportedly unlawful.

DECLARANT SAYETH FURTHER NOT

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed: August 2, 2024

Mark Layton
Mark Layton

the personnel to perform the work and ascertaining how to pay the employees. Mr. Keith Ellison, the then-President of Cobra, developed a wage scale that consisted of a target amount or rate of compensation to entice employees to go to work in a very demanding environment. Mr. Ellison directed Mr. Mark Layton, the Chief Financial Officer, to figure out the details and mechanics of a pay plan. I was directed by Mark Layton to confer with outside counsel to develop a compliant pay practice that would pay at or near the target rate.

4. On October 20, 2017, I contacted attorney Steve Broussard of Hall Estill, a 150-lawyer firm headquartered in Tulsa, Oklahoma. Mr. Broussard practiced employment law for over 25 years and had considerable expertise with wage and hour matters. Over the next several weeks, I discussed and evaluated numerous pay plans with Mr. Broussard, sometimes speaking multiple times per day. This was an iterative process, as I initially indicated the Defendants were interested in paying employees on a day rate basis. The sole purpose in contacting Mr. Broussard was to ensure that the pay plan was lawful under the Fair Labor Standards Act (“FLSA”).

5. After initially leaning towards the day rate, the Defendants shifted to an hourly plus overtime approach. It was expected that the workers would typically work daylight hours, or roughly 12 hours per day. Although the workers were expected to work or be on call for 16 hours per day for each day worked. If they worked over 16 hours, they were paid for the extra hours. Sixteen-hour shifts are the industry custom and practice in storm work. The significance of the 16 hours is that hours worked beyond 16 trigger rest time requirements under the Department of Transportation (“DOT”) and Occupational Safety and Health Administration Regulations (“OSHA”).

6. With the assistance of Mr. Broussard, the Defendants determined an hourly rate that would account for expected overtime and approximate, albeit not match, the targeted rates.

An assumption was made that an employee would work 16 hours a day, 7 days a week for a total of 112 hours per week. Accounting for 40 hours of regular time and 72 hours of overtime, I then established an hourly rate that would result in approximating the targeted rates as set forth below:

Position	Targeted Pay Rate Per Day	Regular Hourly Rate (up to 40 hours per week)	Overtime Rate (hours worked over 40 per week)	Weekly Wage (7 days at 16 hours per day; 40 Regular Rate hours and 72 Overtime Rate hours)
General Foreman	\$1,400.00	\$66.22	\$99.33	\$9,800.56
Foreman	\$1,250.00	\$59.12	\$88.68	\$8,749.76
Journeyman Lineman	\$1,000.00	\$47.30	\$70.95	\$7,000.40
Class A Lineman	\$900.00	\$42.57	\$63.86	\$6,300.72
Class B Lineman	\$800.00	\$37.84	\$56.76	\$5,600.32
Hot Apprentice/Class C	\$700.00	\$33.11	\$49.67	\$4,900.64
Operator	\$800.00	\$37.84	\$56.76	\$5,600.32
Groundsman	\$600.00	\$28.38	\$42.57	\$4,200.24
Mechanic	\$900.00	\$42.57	\$63.86	\$6,300.72

The foregoing pay scale reflects the hourly plan inclusive of overtime that was ultimately used to set employees' compensation by position.

7. I next sent Mr. Broussard an email with the foregoing calculations as set forth above, and later discussed the mechanics of the plan with him. Mr. Broussard understood that the purpose of the calculations was to adopt one of the pay plans discussed and comply with the FLSA. Since Mr. Broussard had approved the pay plan as compliant, I then disseminated that information to the senior leadership of HPE and 5 Star, as well as various administrative personnel for implementation. Defendants believed and continue to believe that the pay practice complied with the FLSA.

8. I also sent Mr. Broussard a draft offer letter, attached to the Motion as Exhibit 5. The offer letter advised employees that the goal was to work 12 hours per day, but as customary with storm work certain situations could arise that could require longer hours, but not to exceed 16 hours. The offer letter further explained that they would be paid a target amount for each day worked which would be paid hourly over a 16-hour shift. Mr. Broussard reviewed the letter and approved it for distribution.

9. If the employee worked more than 16 hours, the Defendants would pay the extra hours. When employees did not work a full 7 days work week, the hourly with overtime earnings did not equal the target rate of compensation. The reason for the shortfall is there was not enough overtime hours to get to the target amount. Defendants had the option, but not the obligation, to pay discretionary bonuses in short weeks to meet the targeted amounts of compensation for one day of work. Such payments were discretionary and made by the leadership on the island.

10. Sometimes the Defendants elected not to make these payments when an employee worked less than a full week. The undisputed evidence is that management retained the right to decide whether to make these payments. Employees who did not work an entire week because of the employee's own misconduct or scheduling issues did not receive discretionary payments, and the pay stubs reflect numerous instances where the bonuses were not paid.

11. For example, in Exhibit 9 the pay stubs of two employees Dennis Moore and Corey Barnes both dated July 13, 2018, reflect that Moore and Barnes worked less than 112 anticipated hours in the work week. The pay stubs reflect that they both worked a total of 96 hours, comprised of 40 regular hours and 56 overtime hours. Mr. Moore's pay was adjusted up and Mr. Barnes did not receive an adjustment. The fact that the payments were made in some instances and not others reflect the discretionary nature of additional compensation.

12. In the next example in Exhibit 10, there is a pay stub received by Dennis Moore with a pay date of 09-18-2018 where he was credited with working 208 hours, comprised of 80 regular hours and 128 overtime hours. There is another pay stub received by one of his co-workers, Mr. Cody Johnson on the same date. Mr. Johnson was credited with working the same number of regular and overtime hours. However, Mr. Moore was credited with an adjustment and Mr. Johnson did not receive a rate adjustment. Again, this is a further reflection of the discretionary nature of the payments as it was not a guaranteed part of the compensation plan.

13. The following exhibits reflect other examples where two colleagues that worked an identical number of hours received different treatment. See Exhibits 11 and 12. In each instance, one received a discretionary payment to adjust their compensation upward and the other did not. These exhibits further support my understanding that these adjustments were discretionary and not guaranteed or paid to everyone who worked a short week.

14. The pay stubs contained in this set of exhibits are reflective of the pay plan that I designed in consultation with Mr. Broussard. The documents show the hourly and overtime pay plan with discretionary adjustments to a budgeted figure as established by the leadership on the island.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 2 day of August, 2024.


Jeff Beagle

UNITED STATES FEDERAL COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AARON MALDONADO, et al,)

Plaintiffs,)

VS.)

CASE NO. 5:21-cv-85-OLG

MAMMOTH ENERGY SERVICES,)

INC., COBRA ACQUISITIONS,)

LLC, HIGHER POWER)

ELECTRICAL, LLC AND 5)

STAR ELECTRIC, LLC)

Defendants.)

* * * * *

ORAL DEPOSITION OF
STEVEN BROUSSARD
MAY 9, 2024
(REPORTED REMOTELY)

* * * * *

ORAL DEPOSITION OF STEVEN BROUSSARD, produced as a
witness at the instance of the PLAINTIFFS, and duly
sworn, was taken in the above-styled and numbered cause
on MAY 9, 2024, from 9:04 a.m. to 10:31 a.m., before
Deborah Garney Viator, RPR, CSR No. 2394, Louisiana CCR
No. 99011, in and for the State of Texas, reported by
machine shorthand, at the offices of Hall Estill,
521 East 2nd Street, Suite 1200, Tulsa, Oklahoma 74120,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

NMA

COMPRESSED TRANSCRIPT

EXHIBIT

3

NELL MCCALLUM & ASSOCIATES, INC. 409-838-0333
NELL MCCALLUM & ASSOCIATES

1	APPEARANCES	1	CERTIFIED QUESTIONS
2		2	NUMBER PAGE/LINE
3	FOR THE PLAINTIFFS:	3	(NONE)
4	Mr. Douglas B. Welmaker (via ZOOM)	4	
5	SBOT NO. 00788641	5	
6	WELMAKER LAW, PLLC	6	
7	409 North Fredonia, Suite 118	7	*****
8	Longview, Texas 75601	8	
9	doug@welmakerlaw.com	9	
10	FOR THE DEFENDANTS AND STEVEN BROUSSARD:	10	
11	Mr. Eugene M. Nettles (via ZOOM)	11	
12	SBOT NO. 14927300	12	
13	Mr. M. Harris Stamey (via ZOOM)	13	
14	SBOT NO. 24060650	14	
15	PORTER HEDGES LLP	15	
16	1000 Main Street, Floor 36	16	
17	Houston, Texas 77002	17	
18	enettles@porterhedges.com	18	
19		19	
20		20	
21		21	
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1	INDEX	1	THE REPORTER: Stipulations?
2	PAGE	2	MR. NETTLES: Under the Federal Rules.
3	Appearances.....2	3	MR. WELMAKER: I agree.
4	Stipulations.....5	4	STEVEN BROUSSARD,
5		5	having been first duly remotely sworn, testified as
6	STEVEN BROUSSARD	6	follows:
7	Examination by Mr. Welmaker.....5	7	EXAMINATION
8	Examination by Mr. Nettles.....37	8	(9:04 A.M.)
9	Reexamination by Mr. Welmaker.....41	9	BY MR. WELMAKER:
10	Reexamination by Mr. Nettles.....46	10	Q. Good morning, Mr. Broussard. Can you state
11	Reexamination by Mr. Welmaker.....47	11	your full name for the record, please?
12		12	A. Yes. Steven Broussard.
13	Signature and Changes.....50	13	Q. All right. And you are in Oklahoma City;
14	Reporter's Certificate.....52	14	correct?
15		15	A. No, I'm in Tulsa.
16	EXHIBITS	16	Q. I'm sorry, Tulsa.
17	NUMBER DESCRIPTION PAGE	17	And would you mind reading off the address
18	1 Email Chain Dated 10/18/2017.....49	18	for your firm one more time, please, into the record.
19	2 Email Chain Dated 10/20/2017.....49	19	A. Yes. It is 521 East Second Street, Suite 1200,
20	3 Email Chain Dated 11/26/2017.....49	20	Tulsa, Oklahoma 74120.
21	4 Offer of Employment Template.....49	21	Q. Okay. And that is for the law firm of
22	5 Email Dated 10/23/2017.....49	22	Hall Estill?
23	6 Hourly Rate Conversion Produced in	23	A. Yes.
24	Native Format.....49	24	Q. Okay. And you're an attorney with Hall Estill;
25	7 Spreadsheet.....49	25	correct?
	3		5

<p>1 A. That's correct.</p> <p>2 Q. And how long have you been with Hall Estill?</p> <p>3 A. Over 36 years.</p> <p>4 Q. Okay. Have you worked for anyone else once you</p> <p>5 received your law degree?</p> <p>6 A. No.</p> <p>7 Q. Okay. And are you board certified?</p> <p>8 A. No.</p> <p>9 Q. All right. Can you -- can you summarize your</p> <p>10 experience with wage and hour law for me?</p> <p>11 A. Yes. I assist employers -- or have assisted</p> <p>12 employers with respect to wage and hour issues and in</p> <p>13 defense of claims related to wage and hour matters.</p> <p>14 Q. And is that your primary focus; or do you do</p> <p>15 other types of employment law, litigation and advice?</p> <p>16 A. Yes, I do other types of employment law, as</p> <p>17 well, litigation and advice.</p> <p>18 Q. Okay. What percentage of your practice is made</p> <p>19 up of wage and hour law?</p> <p>20 A. That's going to vary from time to time. I</p> <p>21 don't know if I can give you an actual percentage</p> <p>22 because it could be on a weekly basis at times, I'm</p> <p>23 advising clients with regard to wage and hour law. It</p> <p>24 might be -- 30 days may go by. But I don't know if I</p> <p>25 can give you a breakdown.</p> <p style="text-align: right;">6</p>	<p>1 Q. And if you will let me finish my question</p> <p>2 before you start to answer, then I will let you finish</p> <p>3 your answer before I begin the next question. Is -- is</p> <p>4 that acceptable?</p> <p>5 A. Yes.</p> <p>6 Q. And, really, the final ground rule is that if I</p> <p>7 ask you a question that you don't understand, please</p> <p>8 feel free to ask me to rephrase the question. I'm --</p> <p>9 I'm more than happy to do so.</p> <p>10 And if you answer my question, I'm going</p> <p>11 to assume that you understood it; is that fair?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. For purposes of this deposition, anytime</p> <p>14 I say "Mammoth," I'm referring to Mammoth Energy</p> <p>15 Services, Inc. Do you understand that?</p> <p>16 A. Yes.</p> <p>17 Q. Anytime I say "Cobra," I'm referring to Cobra</p> <p>18 Acquisitions, LLC; okay?</p> <p>19 A. Okay.</p> <p>20 Q. Anytime I say "5 Star," I'm referring to 5 Star</p> <p>21 Electric, LLC; is that okay?</p> <p>22 A. Okay.</p> <p>23 Q. And anytime I say "Higher Power," I'm referring</p> <p>24 to Higher Power Electrical, LLC; all right?</p> <p>25 A. Okay.</p> <p style="text-align: right;">8</p>
<p>1 Q. Okay. I -- I think that's fair.</p> <p>2 My name is Doug Welmaker, and I represent</p> <p>3 a group of linemen that went down to Puerto Rico in 2017</p> <p>4 and 2018 and were employed by all four of the defendants</p> <p>5 in this case -- Mammoth, Cobra, 5 Star, and Higher</p> <p>6 Power.</p> <p>7 Do you understand that?</p> <p>8 A. I don't understand who they were employed by.</p> <p>9 And --</p> <p>10 MR. NETTLES: I'm sorry. And I'm going to</p> <p>11 object to the form of the question, too, in that it</p> <p>12 assumes facts not in evidence.</p> <p>13 Q. (BY MR. WELMAKER) Yeah, I'm just trying to set</p> <p>14 the stage to let you know that I am -- I have -- let's</p> <p>15 put it this way: I've brought suit against Mammoth,</p> <p>16 Cobra, Higher Power, and 5 Star for unpaid overtime for</p> <p>17 this group of linemen.</p> <p>18 Do you understand that?</p> <p>19 A. I understand that you represent the plaintiffs,</p> <p>20 yes.</p> <p>21 Q. Okay. You know the ground rules for a</p> <p>22 deposition. No shaking of your head, no "huh-uh" or</p> <p>23 "uh-huh," because the court reporter can't get that</p> <p>24 down; right?</p> <p>25 A. Yes.</p> <p style="text-align: right;">7</p>	<p>1 Q. Just for purposes of -- of moving this along</p> <p>2 and speeding it up. Excuse me.</p> <p>3 So have you represented Mammoth Energy</p> <p>4 Services in the past?</p> <p>5 A. I have, in the past, represented affiliates or</p> <p>6 companies that may be owned by Energy Services.</p> <p>7 Q. Okay. Do you know if you've ever represented</p> <p>8 or provided advice to Mammoth Energy Services, Inc.?</p> <p>9 A. I'm not exactly sure of which entity it may be</p> <p>10 of Mammoth that I would have provided some advice to.</p> <p>11 It's possible. I just can't tell you exactly which</p> <p>12 Mammoth entity I might have provided advice to in terms</p> <p>13 of the name "Mammoth."</p> <p>14 Q. Okay. Does it help if I narrow the date range</p> <p>15 down to the 2017-2018 period of time?</p> <p>16 A. Not necessarily.</p> <p>17 Q. Okay. Have you represented Cobra Acquisitions,</p> <p>18 LLC, in the past?</p> <p>19 A. I would say, with respect, that, yes.</p> <p>20 Q. Okay. Did you give Cobra Acquisitions, LLC,</p> <p>21 advice in the 2017 to 2018 period?</p> <p>22 A. I believe I did.</p> <p>23 Q. Okay. Have you provided advice to 5 Star</p> <p>24 Electric, LLC, in the 2017-2018 period?</p> <p>25 A. Possibly.</p> <p style="text-align: right;">9</p>

1 Q. You're not sure about that?

2 A. Well, I -- I -- again, I -- I've represented or
3 provided advice to numerous companies affiliated with
4 Mammoth. I can't tell you exactly which entities,
5 necessarily, and which time frame. So it's pretty
6 possible that I did.

7 Q. Okay. And my final question on this is: Have
8 you provided advice to Higher Power Electrical, LLC, in
9 the 2017-2018 time period?

10 A. That's also very possible.

11 Q. Okay. Just with respect to -- to cases similar
12 to mine, where attorneys are suing the four entities
13 involved in this case for unpaid overtime, how many
14 times have you given a deposition?

15 A. Once.

16 Q. Okay. And when was that deposition taken?

17 A. I think it was a couple of years ago.

18 Q. Okay. So is it true that in about late
19 October -- or let's just say late 2017, you were
20 approached to give advice to Mammoth or its subsidiaries
21 about a pay plan for workers that were going down to
22 Puerto Rico to help restore the electrical grid after
23 Hurricanes Maria and Irma?

24 A. I believe I was approached by one of those
25 entities in October of 2017.

10

1 Q. Okay. What sort of advice were you asked to
2 provide?

3 A. Well, there was a number of things we were
4 looking at and advised to ask. One of them was related
5 to wage and hour issues, with respect to workers in
6 Puerto Rico. There were a number of other issues
7 that -- some related to other employment matters and
8 some related to some other matters that -- I don't know
9 if they would necessarily be considered employment
10 issues.

11 Q. Okay. Do you remember who first approached you
12 about the Puerto Rico project in October, 2017?

13 A. I think it was one of two individuals.

14 Q. And -- and who were those individuals?

15 A. It would have been either Jeff Beagle or
16 Mark Layton.

17 Q. Okay. And who was Jeff Beagle with?

18 A. At that time, Jeff Beagle worked for one of the
19 Mammoth entities, at least as far as I understood.

20 Q. And who was Mark Layton with?

21 A. He was also with one of the Mammoth entities.

22 Q. Okay.

23 A. And when I say "Mammoth entities," I want to
24 make sure it's related to Mammoth as you described it.
25 It's not exactly necessarily the defendant in this

11

1 lawsuit.

2 Q. Okay. Do you know which Mammoth entity it was?

3 A. I really would not know without looking at the
4 information or talking to Mark or Jeff.

5 Q. Okay. So just to help out here, I'm going to
6 try to share my screen and show you what's been marked
7 as Exhibit No. 1. Do you have those printed out in
8 front of you, or are you --

9 A. No. If you want to put it on the screen, I can
10 look at it on the screen.

11 Q. Okay. Are you going to be able to see it okay?

12 A. If I can't, I'll let you know.

13 Q. Okay.

14 A. And I think Gene may try to pull it up on his
15 iPad.

16 Q. All right. It's thinking (screen sharing).

17 A. If you'd like, Gene pulled it up for us on the
18 iPad okay.

19 Q. Okay. So what I'm showing you has been marked
20 as Exhibit 1. The Bates stamps are 2366 to 2367. And
21 what I'd like to draw your attention to is this bottom
22 half of the email.

23 A. Yes.

24 Q. So it looks like this email is from
25 Jeff Beagle, jbeagle@mammothenergy.com, to you. And it

12

1 is dated October 18th, 2017.

2 Do you see that?

3 A. Yes, sir.

4 Q. Okay. Looking at Mr. Beagle's signature block
5 at the bottom of this email, does that help refresh your
6 memory as to which entity employed Mr. Beagle?

7 A. I don't know. There's a Mammoth Energy email
8 address, but it doesn't indicate to me which -- who he
9 was actually employed by.

10 Q. Okay. And what was Mr. Beagle's position when
11 he emailed you on October 18th?

12 A. I understood to be an HR director.

13 Q. Okay. So he was telling you that there's a
14 possibility of deploying about 250 employees to work in
15 Puerto Rico for six to twelve months, and it looks like
16 he's wanting to generally consult with you about that.

17 Do you agree with that?

18 A. Yes.

19 Q. Okay. So that is October 18th.

20 Let me go to Exhibit 2, which is Bates
21 stamped 2373 through 2375.

22 A. Okay.

23 Q. And so what I would like you to do is go to the
24 bottom of 2374, which is the second page, and ask you if
25 you can see the email from Keith Ellison here. That's

13

1 just the header. We'll go to the body of it.
2 A. Yeah, I -- I see on -- starting on Page 2374,
3 going on 2375, looks like there's an email from
4 Keith Ellison.
5 Q. Okay. And it's dated the next day, October
6 the 19th, 2017. Do you agree with that?
7 A. I agree, yes. October 19, 2017.
8 Q. Okay. And who is Keith Ellison with?
9 A. I don't know.
10 Q. Did you ever have any direct communications
11 with Mr. Ellison?
12 A. None that I can recall.
13 Q. Okay. And if we look on 2374, we see the
14 email -- or the body of the email that Mr. Ellison sent.
15 And it's -- it's talking about the fact that we're
16 awarded a contract for 250 linemen and we're paying the
17 following, and then it sets out the job titles and the
18 day rate for each job title.
19 Do you see that?
20 A. Yes, sir.
21 Q. Do you remember being forwarded this email?
22 A. I don't have any specific recollection but,
23 obviously, it looks like it is connected or at least
24 it -- to the email that I sent to Jeff on the 20th of
25 October.

14

1 Q. Okay.
2 A. Yeah, I -- do what?
3 Q. Go ahead.
4 A. Yeah, and that's all I can say on that.
5 Q. Okay. So the middle email is from Mr. Beagle,
6 and it is to you. And it looks like he's forwarding
7 this same email from Mr. Ellison to you and cc'ing
8 Ken Kinsey and Alexander Kalman. Do you agree with
9 that?
10 A. Are you talking about the email that's dated
11 October 20th, where he's addressed it to Ken, (reading):
12 Ken, below are the in -- intended day rates?
13 Q. Yes.
14 A. Yes, I see that email.
15 Q. Okay. So he's forwarding Mr. Ellison's email
16 to you as part of this email; is that correct?
17 A. It -- it appears that I did get this email,
18 yes.
19 Q. It -- it -- so is he forwarding Mr. Ellison's
20 email to you?
21 A. I got it. I would assume that Jeff was --
22 intended to have this sent to me.
23 Q. Okay. All right. And who was Mr. Kinsey with?
24 A. I'm not sure.
25 Q. Did you ever deal directly with him?

15

1 A. I don't remember any conversations with him.
2 Q. Who was Mr. Kalman with?
3 A. I think he worked with Jeff.
4 Q. Okay. All right. So this is forwarded to you.
5 And then on the next page, 2373, at the
6 bottom half of the page, you provide some advice based
7 on the information that you've received; is that
8 correct?
9 A. Yes.
10 Q. Okay. All right. The advice that you're
11 providing in your email, dated October 20th, 2017, at
12 4:00 p.m., is to Mammoth Energy; is that correct?
13 A. It says it's Jeff Beagle.
14 Q. Okay. And --
15 A. Also -- Ken Kinsey is also copied on it.
16 Q. Okay. And if we look back at the email to you,
17 where he's -- where Mr. Beagle is forwarding
18 Mr. Ellison's email, Ken Kinsey's email address
19 indicates a cobratd.com email; is that correct?
20 A. That's correct.
21 Q. Okay. Would you assume from that, that he's --
22 Mr. Kinsey's with Cobra?
23 A. I mean, you could make that assumption.
24 Q. Okay. So in your opinion, are you providing
25 advice in your email, on Page 2373, to Mammoth and the

16

1 subsidiaries that were going to be doing work in
2 Puerto Rico?
3 A. In my opinion, I was providing information that
4 was to be used and for the subsidiaries that would be
5 providing or doing work in Puerto Rico. And I think at
6 this particular time, it was my impression that
7 Mr. Beagle was providing administrative services of some
8 sort to those entities; but you'd have to talk to him
9 about that.
10 Q. Okay. And the entities that -- that Mr. Beagle
11 was providing administrative support to were Cobra,
12 5 Star, and Higher Power, to your understanding?
13 A. At this time, it -- I may have been aware of
14 Cobra. I'm not sure about the others; but I think that
15 ultimately it's very possible that the others that
16 you've indicated, outside of Mammoth, I was providing
17 some assistance to with regard to hiring employees to
18 work in Puerto Rico.
19 Q. And with respect to pay plans; is that correct?
20 A. With respect to pay issues.
21 Q. Okay. All right. And the first paragraph
22 of -- of your response here at 4:00 p.m. talks about
23 offer letters. Do you agree with that?
24 Do you need some time to read it, or are
25 you already familiar with it?

17

1 A. Let's see. Just one second.

2 Q. Take your time.

3 A. I think that first paragraph, yes, I talk about
4 a statement for Puerto Rico law, the signed statement,
5 acknowledging that the terms of their employment
6 relationship, while working in Puerto Rico, would be
7 governed by the laws of their home states or another
8 jurisdiction --

9 Q. Okay.

10 A. -- yes.

11 Q. And so do you recall reviewing any offer
12 letters provided to you by Mammoth Energy?

13 A. Yes.

14 Q. Okay. Do you recall reviewing any offer
15 letters provided by Cobra Acquisitions?

16 A. Let me back up just a second.

17 You mentioned Mammoth Energy. I don't
18 recall that. And I don't recall -- yeah, there wasn't
19 anything by Mammoth -- Mammoth Energy. I don't remember
20 any offer letters from them.

21 But I do recall I looked at a template for
22 an offer letter for one of the other entities, and I
23 can't remember which entity that was right now.

24 Q. Who -- who provided you the offer letters that
25 you reviewed?

18

1 would apply to each worker; is that correct?

2 A. That's what my note says, yes.

3 Q. Okay. Did you understand that Mammoth would be
4 using these offer letters with Cobra, Higher Power, or
5 5 Star?

6 A. I didn't understand that Mammoth would be
7 making any offers because, my understanding, it was
8 either going to -- and -- and maybe -- and I'm not even
9 sure Cobra was going to -- Acquisitions was going to be
10 making offers.

11 My understanding, that there were some
12 affiliated companies that were going to be doing hiring
13 and bringing employees in to work in Puerto Rico. I
14 don't remember Mammoth being actually one of those
15 entities, and I'm not sure about Cobra Acquisitions.
16 Because that doesn't sound like -- that doesn't sound
17 like -- I don't think Cobra Acquisitions was, either. I
18 think it had to do with these other entities.

19 Q. Okay. Do you know one way or the other on
20 Cobra Acquisitions, though?

21 A. I don't remember seeing anything in terms of a
22 template for Cobra Acquisitions so I -- I don't know. I
23 just don't know.

24 Q. Okay. Do you know if Mr. Beagle was going to
25 distribute the offer letters to Cobra or Higher Power or

20

1 A. The -- what I reviewed was provided to me by
2 Jeff Beagle.

3 Q. Okay. So this first part of your email, you're
4 talking about basically how to prevent Puerto Rico law
5 from applying to the linemen that went down to
6 Puerto Rico; is that correct?

7 A. Well, not exactly. So as I remember,
8 Puerto Rico's Labor Transformation and Flexibility Act
9 had just gone into -- in -- gone into effect, and it
10 provided, with respect to employees working temporarily
11 in Puerto Rico, with some exemptions for wage and hour
12 laws in Puerto Rico.

13 There were some -- as I understood it at
14 the time, there were some laws that would still apply to
15 those individuals that would be -- that would make them
16 applicable -- or applicable to them with respect to
17 Puerto Rico law. I think Workers' Comp, and there may
18 have been some other issues like tax and discrimination.

19 Q. Taxes, discrimination, and Workers' Comp is
20 what you say in Paragraph 3.

21 A. Yes. Yes.

22 Q. Okay. So what you're doing is you're advising
23 them, in order to avoid Puerto Rico law applying to
24 these linemen, they needed to specify in the offer
25 letters that -- offer letter that some other state law

19

1 5 Star?

2 A. I -- I don't know what he -- what he actually
3 did with it or what his intent was, but I -- I was under
4 the impression that he was helping put together these
5 offer letters for certain entities that would be hiring
6 individuals and having them work in Puerto Rico.

7 And those -- and, again, I -- and I'm
8 not -- it may have been some of the other defendants
9 other than Mammoth in this case. I don't believe it was
10 Cobra Acquisitions, but I do know -- at least, I -- I
11 saw one or two -- and you probably have those
12 documents -- but I saw one or two that had the actual
13 name of the -- of a company.

14 Q. Okay.

15 A. It might have been Higher Power.

16 Q. Okay. And -- and as part of the advice you
17 were providing, you weren't expected to follow up to
18 make sure that the offer letters were actually sent out
19 by Mammoth or its subsidiaries, were you?

20 A. I did not.

21 Q. So you don't know if they were sent out, and
22 you don't know if they were received back; correct?

23 A. That's correct.

24 Q. And you took no role in ensuring that Mammoth
25 or its subsidiaries actually implemented the advice that

21

<p>1 you're providing about the offer letters here; correct?</p> <p>2 A. Other than possibly talking to Jeff Beagle and</p> <p>3 providing my suggestions, I can't think of anything</p> <p>4 else.</p> <p>5 Q. Okay. And are you talking about talking to</p> <p>6 Jeff Beagle in this email or at a subsequent time?</p> <p>7 A. There were conversations that I had with Jeff,</p> <p>8 and I know there were discussions. But when you talk</p> <p>9 about implementation, for example, I -- I didn't say,</p> <p>10 you know, "Hey, Jeff, I need to see copies of all the</p> <p>11 signed agreements; and I need to make sure I know what</p> <p>12 day it goes out." There was none of that.</p> <p>13 Q. That wasn't your role?</p> <p>14 A. I'm trying -- that wasn't -- yeah, that was</p> <p>15 not -- well, yeah, I didn't -- I was not involved in</p> <p>16 that at all.</p> <p>17 Q. Okay. So you don't know what was sent out; and</p> <p>18 you don't know what was signed and sent back, correct,</p> <p>19 with respect to offer letters?</p> <p>20 A. Yeah, I -- I -- I couldn't tell you what was</p> <p>21 signed.</p> <p>22 Q. Okay. Let me show you Exhibit 3. And before</p> <p>23 we start on this, obviously, I don't want to get into</p> <p>24 any privileged issues. So that's not my goal here.</p> <p>25 A. Okay.</p> <p style="text-align: right;">22</p>	<p>1 Q. It looks like you responded back to Jeff, on</p> <p>2 November 26, at 9:32 a.m., and asked him to send you a</p> <p>3 copy of the offer letter signed by the employee in</p> <p>4 question that you're discussing.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then at the top, we see, from</p> <p>7 Jeff Beagle to you, an email dated November 26, at</p> <p>8 11:00 o'clock a.m.; and he says, "This is a sample."</p> <p>9 Do you remember seeing this email?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So without getting into privilege</p> <p>12 issues, were you -- or can -- can you tell me what --</p> <p>13 what you were doing, generally?</p> <p>14 A. It was not a wage and hour issue. So that -- I</p> <p>15 can tell you that. It was -- it had to do with another</p> <p>16 issue.</p> <p>17 Q. Okay. All right. That's fine.</p> <p>18 And so with respect to your desire to look</p> <p>19 at the offer letter, what did you hope to get from your</p> <p>20 review?</p> <p>21 A. I was looking to see if the</p> <p>22 (ZOOM interruption) --</p> <p>23 THE REPORTER: Mr. Broussard, we've lost</p> <p>24 you.</p> <p>25 Doug, do you want to go off the</p> <p style="text-align: right;">24</p>
<p>1 Q. And this is Bates stamped 2261 through 2263.</p> <p>2 A. Yes.</p> <p>3 Q. And at the bottom, we see an email to Keith --</p> <p>4 from Keith Ellison to Jeff Beagle, and it just says</p> <p>5 "Terminated Staff"; correct?</p> <p>6 A. Let's see here. I see one from -- is it one</p> <p>7 from Jeff Beagle to Keith Ellison, dated November 21,</p> <p>8 2017?</p> <p>9 Q. Yeah, this is from -- it's on Page 2261; and</p> <p>10 it's just at the bottom, from Keith Ellison to</p> <p>11 Jeff Beagle, dated November 21st, at 10:55 a.m.</p> <p>12 A. Oh, shoot. Hold on a second. Yeah, let me</p> <p>13 see. Oh, I see it on -- on your screen. Okay.</p> <p>14 And that's -- yes, I see that. Okay.</p> <p>15 Q. Okay. So --</p> <p>16 A. Yes.</p> <p>17 Q. Then it looks like Beagle sent an email,</p> <p>18 November 26, 2017, at 9:21. It doesn't say who to, and</p> <p>19 everything else has been redacted. But a couple of</p> <p>20 minutes later you respond and say, "Jeff, can you send</p> <p>21 me a copy of the offer letter signed by the employee?"</p> <p>22 Do you see that?</p> <p>23 A. (Distorted audio)</p> <p>24 Q. Were you able to see that, Mr. Broussard?</p> <p>25 A. I'm sorry. What was the question, again?</p> <p style="text-align: right;">23</p>	<p>1 record?</p> <p>2 MR. WELMAKER: Sure.</p> <p>3 THE REPORTER: Okay. We are off the</p> <p>4 record.</p> <p>5 (RECESS FROM 9:34 A.M. TO 9:35 A.M.)</p> <p>6 THE REPORTER: Okay. We are back on the</p> <p>7 record.</p> <p>8 (THE PRECEDING QUESTION WAS READ BACK)</p> <p>9 THE REPORTER: And then the answer that I</p> <p>10 have is, "I was looking to see if the"; and then that's</p> <p>11 when we lost you.</p> <p>12 A. All right. So what I was going to say is I was</p> <p>13 looking to see, in the offer letter, if it might have</p> <p>14 some information that I might deem pertinent to the</p> <p>15 issue that was not the way -- not a wage and hour issue</p> <p>16 that I was looking at.</p> <p>17 MR. WELMAKER: Okay. All right. So let's</p> <p>18 go off the record and see if we can get your -- your IT</p> <p>19 folks to -- to pull back up the screen. Worst case</p> <p>20 scenario, we can just do it through Gene's iPad; but</p> <p>21 let's -- let's see what they can do.</p> <p>22 THE WITNESS: Yeah, we'll be right back.</p> <p>23 THE REPORTER: Okay. We are off the</p> <p>24 record.</p> <p>25 (RECESS FROM 9:38 A.M. TO 9:50 A.M.)</p> <p style="text-align: right;">25</p>

<p>1 THE REPORTER: We'll go back on the 2 record. 3 Q. (BY MR. WELMAKER) Okay (screen sharing). We 4 were looking at Exhibit No. 3, with respect to the 5 questions I was asking you, Mr. Broussard. 6 And at the top, Mr. Beagle is telling you, 7 in response to your request to see the letter, "This is 8 a sample." And it says, as an attachment, "5 Star Offer 9 Letter Template." 10 Do you see that? 11 A. Yes, sir. 12 Q. And that is, again, Bates stamp 2261. We end 13 at 2263. 14 So I'm showing you now Bates stamp 2264. 15 I've marked this as Exhibit No. 4. 16 And does this appear to be the offer 17 letter that Mr. Beagle asked you to review? 18 A. That looks like the template that's referred to 19 in the previous exhibit. 20 Q. Okay. And so if you go down where I've 21 enlarged it, under "Puerto Rico Storm Rate," can you 22 read for me what it says on the right-hand table of that 23 column? 24 A. Yes. (Reading): \$900 per day that will be 25 broken down hourly over 16 hours daily.</p> <p style="text-align: right;">26</p>	<p>1 of doing it, hourly and day rate. 2 Do you know which -- which plan they -- 3 they wound up using? 4 A. No. 5 Q. Okay. So I'm showing you -- it's part of 6 Exhibit 2. It's -- it's, again, Bates stamp 2373. Here 7 you're talking about -- and correct me if I'm 8 summarizing anything wrong -- you're talking about if 9 Puerto Rico law doesn't apply, then you're going to have 10 to pay overtime in accordance with the Fair Labor 11 Standards Act; is that correct? 12 A. And possibly whatever state -- other state -- 13 or state law that might apply. 14 Q. Okay. So if a state law provides additional 15 protections in addition to the FLSA, you would have to 16 deal with those additional protections, as well; 17 correct? 18 A. That's correct. 19 Q. Okay. Then it looks like you provide a method 20 for calculating overtime, under the FLSA, based on a day 21 rate; is that correct? 22 A. Yes, but that's -- it's -- there's an error in 23 that sentence. 24 Q. Okay. So instead of saying the employee would 25 receive 1.5 times that amount, what should it say?</p> <p style="text-align: right;">28</p>
<p>1 Q. Okay. As part of the advice that you provided 2 to Mammoth, or the Mammoth entities, did you instruct 3 Mammoth on, instead of paying a day rate, to take one 4 week's pay, under a day rate system, and break it down 5 into an hourly system? 6 A. No. What we talked about was different 7 options. Day rate was one of those. Paying by the hour 8 was another one. 9 Q. Okay. Were those the two options that you 10 talked about? 11 A. There may have been other things we talked 12 about, but I think when -- as far as I remember, at the 13 end of our conversations about that, those were the two 14 options that were -- we were focusing on. 15 Q. Okay. So one of the options that you talked 16 about was to pay hourly, with time-and-a-half or 17 overtime hours; correct? 18 A. Yes. 19 Q. And then one was to pay a day rate, and that 20 would be the standard half-time rate for overtime 21 damages; correct? 22 A. That's correct. 23 Q. Okay. And so let me go back to your Exhibit 2. 24 And I'm going to increase the -- there (indicating). 25 And so you talked about two different ways</p> <p style="text-align: right;">27</p>	<p>1 A. To half time. 2 Q. Okay. So the correct way to calculate overtime 3 for a day rate is to take half time and divide it -- and 4 multiply it by the number of hours over 40; correct? 5 A. Yeah, number of hours -- the regular rate over 6 40, yes. 7 Q. Let me just -- I just want to clarify. 8 So how would you calculate overtime on a 9 day rate? 10 A. Well, you take the total compensation you 11 receive -- or you take the day rate, for example, that 12 would be paid and then the hours worked during that -- 13 that particular workweek, and you divide that day rate 14 by those hours worked in order to get the regular rate. 15 And that regular rate is what you would use to determine 16 the overtime, daily. 17 Q. Okay. So basically it's a half-time 18 calculation, as opposed to the hourly time-and-a-half 19 calculation; correct? 20 A. That's correct. 21 Q. All right. So you advised Mammoth and its 22 subsidiaries that if they were going to pay a day rate, 23 they were going to have to pay overtime on that day rate 24 if employees worked more than 40 hours in a week; 25 correct?</p> <p style="text-align: right;">29</p>

<p>1 A. It would -- yeah, depending on how many hours 2 they worked, yes, they may have some. And, again, I -- 3 it -- I just -- you mentioned Mammoth. I don't believe 4 Mammoth had any employees out there. But, yes, they 5 added -- it was half time. They'd have to pay overtime 6 for hours over 40.</p> <p>7 Q. Okay. I want to show you what I have marked as 8 Exhibit No. 5 (screen sharing).</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall seeing this email or getting this 11 email?</p> <p>12 A. I don't know if I recall it. I may -- I may be 13 familiar with whatever the attachment was.</p> <p>14 Q. Okay. So the Bates stamp on Exhibit 5 is 2312?</p> <p>15 A. Yes.</p> <p>16 Q. And then just for ease of identification of -- 17 of the exhibits, I have marked 23 -- the next 18 consecutive document, 2313, as Exhibit No. 6. Do you 19 see that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. This document was produced in native 22 format to me. So what I'm -- because I can't load a 23 spreadsheet into my Trial Presentation software, I'm 24 going to try to share my computer screen now.</p> <p>25 A. Okay.</p> <p style="text-align: right;">30</p>	<p>1 looks different from what you recall being attached to 2 that email?</p> <p>3 A. I can't say if there's anything different.</p> <p>4 It -- it may very well be what was attached to that 5 email. It's just that I -- you know, over the period of 6 time that's gone by, I couldn't tell you if it's exactly 7 it; but it looks familiar.</p> <p>8 Q. Okay. Do you recall reviewing this 9 spreadsheet?</p> <p>10 A. I recall looking at a spreadsheet, and this may 11 be it.</p> <p>12 Q. Okay. And were you asked to review it for a 13 particular reason?</p> <p>14 A. No.</p> <p>15 Q. Okay. Why -- why did Mr. Beagle send this 16 spreadsheet to you, if you know?</p> <p>17 A. Yeah, I -- I don't know if I can answer for 18 him; but as I remember at the time, we were talking 19 about different options in terms of the day rate, 20 possibly an hourly rate. And as I understood it, this 21 was an internal document, kind of an accounting 22 document, and nothing that was -- in terms of trying to 23 kind of look at different scenarios, kind of breaking 24 out the pay and under a day rate, potentially. And 25 then, of course, under an hourly rate and projected</p> <p style="text-align: right;">32</p>
<p>1 Q. So I'm stopping the share, starting the share, 2 and I'm trying to show you -- (screen sharing).</p> <p>3 Okay. Can you see what I am trying to 4 share with you right now?</p> <p>5 A. I see a -- looks like a spreadsheet.</p> <p>6 Q. Okay. And at the top, it says 7 Mammoth-Maldonado-FED-2313. Do you -- can -- are you 8 able to see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So I've zoomed on it a little bit. Does 11 that help you see it or are our pictures in the way?</p> <p>12 A. It's a little better. I -- I -- I can make it 13 out.</p> <p>14 Q. Okay. So if you need me to move it, just ask 15 me and I'll do that.</p> <p>16 A. Okay.</p> <p>17 Q. So is this the document that was attached to 18 what we previously referenced as Exhibit 5?</p> <p>19 A. It could be.</p> <p>20 Q. Okay. I will tell you that it's in sequence --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- behind the transmittal email, which was 23 FED-2312. So it appears, to me, to be the attachment to 24 the transmittal email.</p> <p>25 Is there anything about this that -- that</p> <p style="text-align: right;">31</p>	<p>1 issues with regard to overtime.</p> <p>2 But I don't remember this being -- I -- 3 the way I viewed it is more of an internal document, 4 because we -- I don't think they had decided at that 5 time what they were going to do in terms of pay.</p> <p>6 Q. Okay. So at this point in time, to the best of 7 your recollection, they're still trying to figure out 8 exactly how they're going to pay these Puerto Rico 9 linemen; correct?</p> <p>10 A. I think so. And I think I might have looked at 11 this, too, to make sure that we weren't going to have 12 any minimum wage issues. And so I -- I remember this 13 was kind of a -- more for me, anyway, as a kind of a -- 14 an internal document that they might have been looking 15 at in -- internally and -- you know, but it wasn't, in 16 my mind, anything final.</p> <p>17 Q. Okay. And so one of the things that you were 18 focused on when you were looking at this was potential 19 minimum wage issues?</p> <p>20 A. Yeah. I just wanted to make sure that their 21 hourly rate would -- would actually exceed; and it did, 22 of course, the minimum -- minimum wage rate --</p> <p>23 Q. Okay.</p> <p>24 A. -- or minimum...</p> <p>25 Q. Were you also looking at this for other</p> <p style="text-align: right;">33</p>

1 reasons, such as the -- the individuals' titles?

2 A. You know, I don't -- I don't know if I could
3 say we were necessarily doing that. I think the -- as
4 my understanding, these folks, except for perhaps the
5 foreman, these were -- all would have been individuals
6 who were nonexempt, doing manual type of labor out in
7 the field. So I don't remember if we had a discussion
8 about the foreman or not.

9 Q. Okay. Did you have a discussion about any of
10 the other titles on this spreadsheet?

11 A. I don't remember any specific discussions about
12 those titles.

13 Q. And so as I -- I think you testified before,
14 and correct me if I'm wrong, you never got a -- a final
15 determination as to the pay system that was going to be
16 used for the Puerto Rico linemen; is that correct?

17 A. That's correct.

18 Q. Okay. So they -- they -- Mammoth and its
19 subsidiaries could have gone with a day rate, which they
20 would have had to pay overtime on; correct?

21 A. That's correct.

22 Q. And they could --

23 A. With regard to, at least, some of the employees
24 out there. I -- you know, I think they had some
25 managers out there, obviously, would have been an --

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1 exempt. But, yeah, with regard to some employees, they
2 would have.

3 Mammoth -- Mammoth wouldn't have been
4 working out there, had their employees there. It would
5 have been the subsidiaries or affiliated companies that
6 would have been controlled by that.

7 Q. Working down at Puerto Rico at that time?

8 A. Yes.

9 Q. Okay. So let's just -- I think you make a good
10 point with respect to the nonexempt employees.

11 A. Uh-huh.

12 Q. If Mammoth or its subsidiaries was going to pay
13 them a day rate, then they're still going to have to pay
14 overtime on that day rate if these in -- individuals
15 worked more than 40 hours in a workweek; right?

16 A. I think that was our discussion, yes.

17 Q. Okay. And is that your opinion? Is that the
18 advice that you provided?

19 A. Yes.

20 Q. Okay. And by the same token, if -- if these
21 folks were going to be paid hourly and they worked more
22 than 40 hours in a workweek, then they're going to be
23 paid overtime at time and a half; correct?

24 A. Yes.

25 Q. Okay. So were those the two options that you

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1 discussed with Beagle and other Mammoth representatives,
2 day rate and hourly pay?

3 A. Those were the two, I think, that -- that we --
4 the primary discussion. I think there might have been
5 some discussions about possibly the fluctuating workweek
6 and how we would handle that, but I don't think that was
7 applicable under the circumstances.

8 And there may have been some other
9 discussions about other matters or options, prior to
10 kind of -- at least in my mind -- focusing on the day
11 rate and hourly pay issues.

12 Q. Okay. Did you ever talk about a -- a third
13 option that would be hourly, but boosted up to the day
14 rate? So that if the pay fell below promised day rate,
15 it would be brought up to what it was promised?

16 A. I don't know if I remember any conversations
17 about that.

18 Q. Okay. Did you ever discuss a system that even
19 though it was hourly, Mammoth or its subsidiaries would
20 pay additional compensation in addition to the hourly
21 rates?

22 A. I don't remember that.

23 Q. Okay. So the two plans that you were looking
24 at were just hourly and day rate, and -- and you weren't
25 contemplating a mixed plan as a potential third option;

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1 correct?

2 A. I think my last -- the last I remember, we left
3 it -- in terms of discussions were, you know, did they
4 go with the day rate; do they go with an hourly rate?
5 Those were things that I remember, at the end of the
6 day, that they were discussing. Now -- but I don't
7 remember any other particular method.

8 MR. WELMAKER: Okay. I'll pass the
9 witness.

10 MR. NETTLES: Guys, let's take just a
11 short break. I think I've got a handful of questions,
12 and that'll be it.

13 MR. WELMAKER: Okay.

14 THE WITNESS: Okay.

15 THE REPORTER: Okay. We're off the
16 record.

17 (RECESS FROM 10:07 A.M. TO 10:11 A.M.)

18 THE REPORTER: We're back on the record.

19 EXAMINATION

20 (10:11 A.M.)

21 BY MR. NETTLES:

22 Q. Mr. Broussard, my name is Gene Nettles; and you
23 understand that I'm a lawyer with Porter & Hedges and
24 represent the defendants in this case?

25 A. Yes.

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<p>1 Q. All right. So you've answered various 2 questions this morning from Mr. Welmaker concerning what 3 you were doing in October of 2017; is that correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. The purpose -- was it your understanding of the 6 purpose for which you were hired by Mr. Beagle at that 7 time would have been for the companies -- and we talked 8 about Mammoth and its subsidiaries -- to be compliant 9 with the Fair Labor Standards Act?</p> <p>10 A. That's correct. That was one of the things 11 that I believe I was tasked to do in 2017, in October of 12 that year.</p> <p>13 Q. Now, you also stated that you drafted some 14 language and you sent that in an email. And it was 15 marked as one of the exhibits by Mr. Welmaker for your 16 deposition; correct?</p> <p>17 A. That is correct.</p> <p>18 Q. And what is your understanding that happened to 19 that language?</p> <p>20 A. My understanding was Mr. Beagle incorporated 21 that language in templates that may have been used by 22 those subsidiaries that were hiring individuals and 23 deploying them to Puerto Rico.</p> <p>24 Q. And one of those templates was marked as an 25 exhibit, as well; is that correct?</p> <p style="text-align: right;">38</p>	<p>1 the new Puerto Rico law that had been enacted.</p> <p>2 Q. All right. Did anybody with Mammoth or any of 3 the related entities ever express to you any intent, 4 effort, or interest in trying to come up with a pay 5 system to avoid paying overtime?</p> <p>6 A. No.</p> <p>7 Q. Now, what were the two pay plans that were 8 under evaluation that you talked to Mr. Beagle about?</p> <p>9 A. So --</p> <p>10 MR. WELMAKER: Objection, form.</p> <p>11 A. So at the very end of what would be my 12 conversations about the -- the pay plans that I had with 13 Mr. Beagle, we were focused on the -- possibly of a day 14 plan or an hourly plan. And so, ultimately, at least 15 from my perspective, those were the two things that -- 16 that we were -- that were under consideration.</p> <p>17 Q. (BY MR. NETTLES) And were there any other 18 options or plans that were under consideration, based on 19 your knowledge at that time?</p> <p>20 A. Not at that time, as far as I could -- could 21 tell.</p> <p>22 Q. And on the hourly with overtime arrangement, 23 were you of the opinion that taking a target level of 24 compensation associated with an assumed number of hours 25 to come to an hourly rate with overtime would be</p> <p style="text-align: right;">40</p>
<p>1 A. I believe that template may have also had 2 that -- yes, may have had some -- that information in 3 that particular template, yes, sir.</p> <p>4 Q. And you drafted the template -- template and 5 reviewed the -- and I -- excuse me.</p> <p>6 You drafted language that was incorporated 7 in the template, and you reviewed the template for the 8 subsidiaries to determine whether or not it was 9 compliant with the Fair Labor Standards Act and Puerto 10 Rico laws; is that correct?</p> <p>11 MR. WELMAKER: Objection, form.</p> <p>12 A. Yeah, I -- I remember reviewing a template that 13 had been prepared and advised Mr. Beagle that I believe 14 it was compliant with the Fair Labor Standards Act and 15 with Puerto Rico law.</p> <p>16 Q. (BY MR. NETTLES) And -- and that was your 17 purpose in doing so?</p> <p>18 A. Yes, sir.</p> <p>19 MR. WELMAKER: Objection, form.</p> <p>20 Q. (BY MR. NETTLES) Just so the record is clear, 21 state again: What was your purpose in looking at the 22 template that was provided to you?</p> <p>23 A. My purpose was to -- to make sure -- or to try 24 to provide legal advice with respect to whether it would 25 be compliant with Federal law and also with respect to</p> <p style="text-align: right;">39</p>	<p>1 compliant?</p> <p>2 A. Yeah --</p> <p>3 MR. WELMAKER: Objection, form.</p> <p>4 A. Yeah. I -- I don't -- I don't see any issue 5 with that at all. I think companies do that all the 6 time. They try to figure out, you know, what it is 7 that -- you know, what the -- what the wage rate might 8 be by trying to figure out -- working within certain 9 targets or limitations. So I don't see an issue with 10 that at all.</p> <p>11 Q. (BY MR. NETTLES) And based on what you know 12 from the hourly with overtime plan that you and 13 Mr. Beagle and Layton discussed, was it your opinion 14 that was compliant with the Fair Labor Standards Act?</p> <p>15 A. Yes, sir.</p> <p>16 MR. WELMAKER: Objection, form.</p> <p>17 MR. NETTLES: I'll pass the witness back, 18 Doug.</p> <p>19 REEXAMINATION (10:16 A.M.)</p> <p>20 BY MR. WELMAKER:</p> <p>21 Q. Okay. I just have a couple of questions, 22 Mr. Broussard.</p> <p>23 A. Uh-huh.</p> <p>24 Q. So correct me if I'm wrong, did you just</p> <p style="text-align: right;">41</p>

1 testify that -- that some of the advice that you gave
 2 was incorporated into an offer letter template?
 3 A. Yeah. So if you notice the -- the --
 4 Q. I just want to know yes or no.
 5 A. Yes.
 6 Q. Okay. And was this offer letter template
 7 distributed by Mammoth or its subsidiaries?
 8 A. I don't know -- I can't tell you if it was
 9 actually distributed. My understanding was that the
 10 subsidiaries -- or at least some of those subsidiaries
 11 would be distributing offer letters based on the
 12 templates.
 13 Q. Okay. But you don't know whether it was
 14 distributed or not; correct?
 15 A. I don't.
 16 Q. And it wasn't within the scope of -- of your
 17 retention by Mammoth or its subsidiaries to follow up
 18 and find out if -- if the offer letter that we're
 19 discussing was distributed; correct?
 20 A. That's correct.
 21 Q. Okay. You stated that you reviewed a template
 22 and told Mr. Beagle -- an offer letter template and told
 23 Mr. Beagle that it was compliant under the FLSA. Do you
 24 remember saying that?
 25 A. Yes, sir.

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1 Q. Okay. What template are you talking about?
 2 A. There was a template that was provided to me in
 3 October, and it -- I think it incorporated -- it was
 4 after I sent the email out that -- the lengthy email
 5 with regard to Puerto Rico law. And then there was some
 6 suggested language with regard to what might go into an
 7 offer letter.
 8 Q. And was that template provided to you in email?
 9 A. What's that?
 10 Q. Was that template provided to you by email?
 11 A. Yes.
 12 Q. Okay. So if it was provided to you by email, I
 13 should have a copy of that; correct?
 14 A. I -- I don't know. I wasn't involved in the
 15 discovery of this case, but I would assume so.
 16 Q. Okay. So was the template that you were
 17 provided, that you were emailed, different from the
 18 template that we reviewed earlier?
 19 A. I believe there -- there was a difference. I
 20 don't think it -- first of all, I don't think it was the
 21 same company. And then, secondly, I noticed you had
 22 highlighted, in the template we showed today, something
 23 regard -- and then I read the information about the, I
 24 guess, compensation or pay -- it didn't have that
 25 language.

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1 Q. Okay. What language did it have?
 2 A. It had some other language, in terms of -- I
 3 think it was in parentheses, maybe something effect --
 4 that effectively said hourly or salaried or something
 5 like that.
 6 Q. Okay. As we sit here today, do you recall
 7 exactly what that letter said with respect to
 8 compensation?
 9 A. I can't remember the specifics of it, other
 10 than that it was in a template form and it -- I don't
 11 remember -- nothing else stands out with regard to
 12 compensation. I just remember that the -- whatever was
 13 in the compensation box, it was in parentheses. And so
 14 it was sort of like an either/or, or something like
 15 that. It -- it hadn't been -- as far as I could tell --
 16 been a decision made on, you know, identifying a
 17 specific compensation package.
 18 Q. Okay. So at that point in time that you
 19 reviewed that particular template --
 20 A. Uh-huh.
 21 Q. -- Mammoth and its subsidiaries were still
 22 trying to decide, in your opinion, how to pay the
 23 linemen that were going down to Puerto Rico; is that
 24 correct?
 25 A. Yeah, I -- I don't know if I can -- maybe. I

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1 mean, I -- I don't know what happened, in terms of when
 2 they made a decision. I just know that during my
 3 conversations that we were talking about this, the
 4 impression I got was that they were trying to figure out
 5 which way to go.
 6 Q. Okay.
 7 A. And I don't know, when I looked at that
 8 template, if they had already decided that or not.
 9 Q. All right. When was the last time that you
 10 looked at the template that we're discussing right now?
 11 A. I may have seen a copy of it yesterday when I
 12 was preparing for the deposition.
 13 Q. Okay. And who showed that to you?
 14 A. It was provided to me by my counsel.
 15 Q. And who was that?
 16 A. Mr. Nettles.
 17 Q. Okay. With respect to advice that you provided
 18 Mammoth or its subsidiaries regarding payment of
 19 overtime, either hourly or day rate, did you review any
 20 paychecks to determine whether or not Mammoth was
 21 complying -- or Mammoth subsidiaries were complying with
 22 any of the advice that you provided them?
 23 A. No.
 24 Q. Okay. That wasn't part of the scope of why you
 25 were retained, was it?

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1 A. I was not -- I was not asked to do that.
 2 Q. Okay. And you didn't do that; correct?
 3 A. That's correct.
 4 Q. Okay. So just to be clear, you didn't review
 5 actual payroll records at any point to determine whether
 6 or not those records and the payment plan was in
 7 compliance with the FLSA; correct?
 8 A. That's correct.
 9 MR. WELMAKER: I'll pass the witness.
 10 MR. NETTLES: Let me get off again and
 11 just see. I don't think I've got anything else, but
 12 just give me a couple of minutes here.
 13 THE WITNESS: All right.
 14 THE REPORTER: We're off the record.
 15 (RECESS FROM 10:22 A.M. TO 10:27 A.M.)
 16 THE REPORTER: Back on the record.
 17 REEXAMINATION
 18 (10:27 A.M.)
 19 BY MR. NETTLES:
 20 Q. Mr. Broussard, just a -- maybe another question
 21 or two.
 22 With respect to the individuals that you
 23 talked to, with respect to the defendants in this case,
 24 Mammoth and the related subsidiaries, did you talk to
 25 anyone else other than Jeff Beagle?

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1 A. I would have had a conversation, at least one
 2 conversation, involving Mark Layton.
 3 Q. And what do you remember about that
 4 conversation in particular and when it occurred?
 5 A. It was on a weekend, and it had to do with --
 6 we were talking about, again, I think, the options in
 7 terms of -- of pay. I can't remember all the specifics
 8 of it, but I -- I'm certain we talked about the hourly
 9 issue and also day rates. And that was, again -- he
 10 was -- he was on the line with myself and -- and
 11 Jeff Beagle.
 12 Q. Okay. And why do you remember that in
 13 particular?
 14 A. I just remember it because I -- I was having
 15 that conversation on my back deck at home, and it was on
 16 a weekend.
 17 Q. Okay.
 18 MR. NETTLES: All right. I think with
 19 that, I'm going to pass the witness back, Doug.
 20 REEXAMINATION
 21 (10:28 A.M.)
 22 BY MR. WELMAKER:
 23 Q. All right. Mr. Broussard, I'd like to ask you
 24 a couple of more questions about that.
 25 So this call with Mr. Layton, when did

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1 that occur?
 2 A. That would have been sometime in October. It
 3 was -- it was on a weekend.
 4 Q. Okay. And at that point in time, did you have
 5 the sense that they had -- or that Mr. Layton or
 6 Mr. Beagle had made a decision as to which pay system to
 7 use, an hourly system or a day rate system?
 8 A. No, I don't think so.
 9 Q. Okay. And what advice did you provide them in
 10 that phone call?
 11 A. Yeah, I -- the only thing I can remember at
 12 this time -- and we may have discussed other things,
 13 too -- with having to do with, you know, how the -- kind
 14 of -- and I think it was -- it may have been more for
 15 Mark's benefit, kind of explaining how the day rate
 16 worked and the hourly system would work, maybe talked
 17 about what the antic- -- anticipated length of the
 18 project would be. And I -- but I can't remember
 19 anything more specific than that.
 20 MR. WELMAKER: Okay. I'll pass the
 21 witness.
 22 MR. NETTLES: Let me just check one more
 23 time. I think that's all I have, Doug, but give me just
 24 a couple of minutes here, please.
 25 THE REPORTER: Okay. We're off the

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1 record.
 2 (RECESS FROM 10:29 A.M. TO 10:31 A.M.)
 3 THE REPORTER: Okay. We're back on the
 4 record.
 5 MR. NETTLES: No further questions. Pass
 6 the witness.
 7 MR. WELMAKER: All right. Thank you very
 8 much, Mr. Broussard.
 9 THE WITNESS: All right. Thank you.
 10 THE REPORTER: Gene, do you need a copy of
 11 the deposition?
 12 MR. NETTLES: Yes.
 13 THE REPORTER: And what about signature?
 14 MR. NETTLES: Yes.
 15 (EXHIBIT NO. 1 THROUGH EXHIBIT NO. 7
 16 PROVIDED AND MARKED)
 17 (THE DEPOSITION WAS CONCLUDED AT 10:31 A.M.)
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ERRATA SHEET			
DEPOSITION OF: STEVEN BROUSSARD; MAY 9, 2024			
PAGE	LINE	CHANGE	REASON
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25	Signature: _____ Date: _____		

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UNITED STATES FEDERAL COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION	
1	
2	
3	
4	AARON MALDONADO, et al,)
5)
6	Plaintiffs,)
7)
8)
9	VS.) CASE NO. 5:21-cv-85-OLG
10)
11)
12	MAMMOTH ENERGY SERVICES,)
13	INC., COBRA ACQUISITIONS,)
14	LLC, HIGHER POWER)
15	ELECTRICAL, LLC AND)
16	STAR ELECTRIC, LLC)
17)
18	Defendants.)
19	
20	REPORTER'S CERTIFICATION
21	DEPOSITION OF STEVEN BROUSSARD
22	MAY 9, 2024
23	(REPORTED REMOTELY)
24	I, DEBORAH GARNEY VIATOR, a Certified Shorthand
25	Reporter in and for the State of Texas, hereby certify
	to the following:
	That the Witness, STEVEN BROUSSARD, was duly sworn
	by the officer and that the transcript of the oral
	deposition is a true record of the testimony given by
	the Witness;
	That the deposition transcript was submitted on

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1	I, STEVEN BROUSSARD, have read the foregoing
2	deposition and hereby affix my signature that same is
3	true and correct, except as noted above.
4	
5	_____
6	STEVEN BROUSSARD
7	
8	THE STATE OF _____)
9	COUNTY OF _____)
10	
11	Before me, _____, on this
12	day personally appeared STEVEN BROUSSARD, known to me
13	(or proved to me under oath or through
14	_____ (description of identity card or
15	other document) to be the person whose name is
16	subscribed to the foregoing instrument and acknowledged
17	to me that they executed the same for the purposes and
18	consideration therein expressed.
19	Given under my hand and seal of office this _____
20	day of _____, 2024.
21	_____
22	
23	NOTARY PUBLIC IN AND FOR
24	THE STATE OF _____
25	

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1	_____, 2024, to the Witness or to the
2	attorney for the Witness for examination, signature, and
3	return to the offices of Nell McCallum & Associates,
4	Inc., by _____, 2024;
5	That pursuant to information given to the deposition
6	officer at the time said testimony was taken, the
7	following includes all parties of record:
8	FOR THE PLAINTIFFS:
9	Mr. Douglas B. Welmaker (via ZOOM)
10	SBOT NO. 00788641
11	WELMAKER LAW, PLLC
12	409 North Fredonia, Suite 118
13	Longview, Texas 75601
14	doug@welmakerlaw.com
15	FOR THE DEFENDANTS AND STEVEN BROUSSARD:
16	Mr. Eugene M. Nettles (via ZOOM)
17	SBOT NO. 14927300
18	Mr. M. Harris Stamey (via ZOOM)
19	SBOT NO. 24060650
20	PORTER HEDGES LLP
21	1000 Main Street, Floor 36
22	Houston, Texas 77002
23	enettles@porterhedges.com
24	I further certify that I am neither counsel for,
25	related to, nor employed by any of the parties or

53

<p>1 attorneys in the action in which this proceeding was</p> <p>2 taken, and further that I am not financially or</p> <p>3 otherwise interested in the outcome of the action.</p> <p>4</p> <p>5 Further certification requirements pursuant to the</p> <p>6 Federal Rules of Civil Procedure will be certified to</p> <p>7 after they have occurred.</p> <p>8</p> <p>9 SWORN TO AND SUBSCRIBED by me in Beaumont, Texas, on</p> <p>10 this _____ day of _____, 2024.</p> <p>11</p> <p>12 _____</p> <p>13 DEBORAH GARNEY VIATOR, RPR</p> <p>14 Texas CSR No. 2394</p> <p>15 Expiration Date: August 31, 2024</p> <p>16 Firm Registration No. 143</p> <p>17 Nell McCallum & Associates, Inc.</p> <p>18 3560 Delaware Street, Suite 402</p> <p>19 Beaumont, Texas 77706</p> <p>20 (409)838-0333/(409)832-4501</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">54</p>	
<p>1 REPORTER FIRM'S FURTHER CERTIFICATION</p> <p>2 The Changes and Signature Pages were/were not</p> <p>3 returned to the deposition officer on</p> <p>4 _____, 2024;</p> <p>5 If returned, the attached Changes and Signature</p> <p>6 Pages contain any changes and reasons therefor;</p> <p>7 The original deposition was delivered to</p> <p>8 MR. DOUGLAS B. WELMAKER, for safekeeping on</p> <p>9 _____, 2024;</p> <p>10 That a copy of this certificate was served on all</p> <p>11 parties shown herein.</p> <p>12 SWORN TO AND SUBSCRIBED by me in Beaumont, Texas,</p> <p>13 on this _____ day of _____,</p> <p>14 2024.</p> <p>15</p> <p>16 _____</p> <p>17 DEBORAH GARNEY VIATOR, RPR</p> <p>18 Texas CSR No. 2394</p> <p>19 Expiration Date: August 31, 2024</p> <p>20 Firm Registration No. 143</p> <p>21 Nell McCallum & Associates, Inc.</p> <p>22 3560 Delaware Street, Suite 402</p> <p>23 Beaumont, Texas 77706</p> <p>24 (409)838-0333/(409)832-4501</p> <p>25</p> <p style="text-align: right;">55</p>	

Beagle initially indicated that the Defendants were interested in paying employees on a day rate basis. I responded that they could do so but would need to pay overtime on top of the day rate and explained how such a calculation was done. We also discussed an hourly pay rate approach. I understood that Beagle and Layton were intent on adopting a pay plan, possibly based on a day or hourly rate, compliant with the FLSA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 30th day of July 2024.



Steven Broussard



Re: Offer of Employment

Dear _____

Thank you for your interest in employment with 5 Star Electric LLC. We are pleased that you have accepted the position of Class A Lineman. You have been hired to work on a special assignment repairing infrastructure in Puerto Rico, which is expected to be completed within one (1) year. Our goal is to work 12 hours a day and not to work at night. As many of you know and are accustomed to with storms, certain situations may arise that could require longer hours, but will not exceed 16 hours. Although the company will attempt to place you in non-project related work please understand that this is a project-based position and 5 Star cannot guarantee continued employment after the project has concluded. Additionally, this position is "at-will" and we recognize that you retain the option, as does 5 Star, of ending your employment with 5 Star at any time, with or without notice and with or without cause. Finally, your employment relationship with 5 Star Electric LLC will be governed by the OKLAHOMA law.

This letter will serve as written confirmation of our discussions regarding your employment with the Company. This offer of employment is contingent upon the successful completion of all pre-employment requirements including but not limited to background screens, MVRs, and drug screens.

The Company intends to move quickly to fill this position. Below is the framework for the proposed employment offer. Please note that the offer assumes your willingness to relocate to travel to work locations.

Start Date	
Starting Hourly Rate	
Puerto Rico Storm Rate	\$900.00 per day that will be broken down hourly over 16 hours daily.
Medical/Dental/Vision Insurance	Eligible first of the month following start of employment.
Additional Benefits	401(k) plan (company contribution currently suspended; company paid life insurance at two times earnings, short and long term disability – eligible first of month following start of employment

EXHIBIT

5

exhibitstickler.com



This offer is also contingent upon your representation by signing below that as of your first day of employment you are not subject to a non-compete, non-solicitation or any other type of agreement that would preclude your employment with or impact the performance of your job responsibilities with the Company.

Your employment with the Company is “at will”, which means that either you or the Company may terminate your employment relationship at any time, without notice or cause. This offer of employment is not intended to create a contract between you and the Company.

Regards,

Please sign below in the space provide to acknowledge you have read this acknowledgment and agree with its terms. If you have any questions, please contact Ken Kinsey or Human Resources.

Agreed By: _____
Signature & Date

UNITED STATES FEDERAL COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AARON MALDONADO, et al)
)
VS.) Cause No. 5:21-cv-85-OLG
)
MAMMOTH ENERGY SERVICES, INC.,)
COBRA ACQUISITIONS, LLC,)
HIGHER POWER ELECTRICAL, LLC,)
AND 5 STAR ELECTRIC, LLC)

ORAL DEPOSITION

DEFENDANTS' DESIGNATED REPRESENTATIVE

MARK LAYTON

JUNE 20, 2024

VOLUME 1

(REPORTED REMOTELY)

ORAL DEPOSITION of MARK LAYTON, produced as a witness at
the instance of the Plaintiffs, and duly sworn, was taken in
the above-styled and numbered cause on the 20th day of June,
2024, from 9:41 a.m. to 5:33 p.m., before Rhonda K. Ashman,
CSR, RPR, in and for the State of Texas, reported by
stenographic means via Zoom, in Oklahoma City, Oklahoma,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

Mr. Douglas B. Welmaker, Esq.
WELMAKER LAW, PLLC
409 North Fredonia
Suite 118
Longview, Texas 75601
Phone (512) 799-2048
doug@welmakerlaw.com

FOR THE DEFENDANTS:

Mr. William Stukenberg, Esq.
PORTER HEDGES, LLP
1000 Main Street
Suite 3600
Houston, Texas 77002
Phone (713) 226-6000
wstukenberg@porterhedges.com

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1 P R O C E E D I N G S

2 THE COURT REPORTER: We are on the record at
3 9:41 a.m. Before I swear in the witness, would Counsel,
4 please, state their appearances and transcript orders for the
5 record.

6 MR. WELMAKER: Doug Welmaker for the plaintiffs
7 in this action. And I would like a condensed.

8 MR. STUKENBERG: And Will Stukenberg on behalf
9 of the defendants, and I'll take a full transcript and a
10 condensed, please.

11 MARK LAYTON,
12 having been first duly sworn, testified as follows:

13 E X A M I N A T I O N

14 BY MR. WELMAKER:

15 Q. Can you state your name for the record, please.

16 A. Mark Layton.

17 Q. All right. And Mr. Layton, I have noticed your
18 deposition today. And I'm going to assume that you've seen
19 that. And I also want to show you a copy of that. Let's see
20 if I can do it. Give me one second to get this going.

21 It always works in practice, and then when I try
22 to do a deposition, it just doesn't do what it's supposed to
23 do.

24 (Exhibit 1 marked.)

25 MR. STUKENBERG: Exhibit 1, to the extent that's

1 helpful.

2 MR. WELMAKER: What?

3 MR. STUKENBERG: Exhibit 1 to the extent that's
4 helpful.

5 MR. WELMAKER: Yeah, let me try to get it going
6 one more time.

7 Okay. Can everybody see what I've marked as
8 Exhibit 1?

9 THE WITNESS: Yes.

10 MR. STUKENBERG: Yes.

11 Q. (BY MR. WELMAKER) Okay. And so, Mr. Layton, this is
12 the corporate rep notice, the 30(b)(6) notice, for the
13 representatives of all four defendants in this case.

14 And I'll give you plenty of time to look through
15 it. And especially look at Schedule A and see if you're
16 familiar with this or if you've ever seen this before.

17 A. Yes. Counsel provided a copy of this to me.

18 Q. Okay. And have you reviewed the items set forth on
19 Schedule A?

20 A. Yes.

21 Q. And are you ready to testify about all of those
22 items?

23 A. Yes.

24 MR. STUKENBERG: Except subject to our
25 objections that we served, Doug, obviously.

1 MR. WELMAKER: All right.

2 Q. (BY MR. WELMAKER) So this is the third time that
3 we've met; is that correct?

4 A. I don't know. Sounds directionally correct.

5 Q. Okay. And a lot of the questions that I have asked
6 you, I've asked you before, but I have to ask them again for
7 purposes of this lawsuit. And also, I'm sure some things have
8 changed since we last spoke.

9 So can you tell me what your current positions
10 are with respect to any of the Mammoth entities, any of the
11 Cobra entities?

12 A. I'm not sure I understand the context of any of the
13 Mammoth entities or any of the Cobra entities.

14 Q. Okay. So, for example, the first entity that I want
15 to ask you about is Mammoth Energy Services, Inc.

16 A. Okay.

17 Q. What is your relationship to that entity?

18 A. I am the chief financial officer and secretary of
19 Mammoth Energy Services, Inc.

20 Q. And how long have you held those positions?

21 A. Since sometime in 2016.

22 Q. Okay. Have you dropped any positions that you used
23 to hold with Mammoth Energy Services, Inc., since 2016 through
24 today?

25 MR. STUKENBERG: Objection, form.

1 A. I'm not sure what drop positions means.

2 Q. (BY MR. WELMAKER) Have you only held those two
3 positions since 2016 through today with Mammoth Energy
4 Services?

5 A. Those are my roles. I don't understand what the
6 context of positions is.

7 Q. Have you occupied any other officer positions with
8 Mammoth Energy Services, Inc., since 2016?

9 A. Officer positions, no, sir.

10 Q. Okay. And with respect to Mammoth Energy Services,
11 what are your roles with Mammoth Energy Services, Inc.?

12 A. I believe that's what I just answered. So I don't
13 understand the question.

14 Q. I'm sorry. It's Mammoth Energy, Inc., is what I
15 meant to ask about.

16 A. With Mammoth Energy, Inc., I am the chief financial
17 officer. That is my employing entity.

18 Q. Do you occupy any other officer positions with
19 Mammoth Energy, Inc.?

20 A. No.

21 Q. Okay. What about are you associated in any way with
22 Mammoth Energy Partners, LLC?

23 A. Yes.

24 Q. Okay. In what way?

25 A. I am the chief financial officer of that entity.

1 Q. Do you occupy any other positions with this entity?

2 A. No.

3 Q. How long have you been CFO of Mammoth Energy

4 Partners?

5 A. I believe since sometime in either 2014 or 2015. I

6 don't recall which.

7 Q. And how long were you or have you been CFO of Mammoth

8 Energy, Inc.?

9 A. Since its formation in, I believe, 2016.

10 Q. Okay. Who are the other officers of Mammoth Energy

11 Services, Inc.?

12 A. The other officer is Arty Straehla. He is both the

13 CEO as well as a director. I don't necessarily consider

14 directors as officers.

15 Q. What would you consider a director to be?

16 A. A director.

17 Q. Okay. Are there any other officers or directors of

18 Mammoth Energy Services, Inc.?

19 A. There are other directors, yes.

20 Q. Who are the other directors?

21 A. Arthur Amron, Arthur Smith, James Palm, Paul Jacobi

22 and Dr. Corey Booker.

23 Q. And if I wanted to look into those individuals in

24 more detail, I could go to Mammoth Energy Services' website?

25 A. Yes, among other places.

1 Q. What other places could I go?

2 A. You could go to the SEC's website.

3 Q. All right. And who are the other officers or
4 directors of Mammoth Energy, Inc.?

5 A. The other officer at Mammoth Energy, Inc., is Arty
6 Straehla. He is the chief executive officer. I believe the
7 directors of that entity are Mr. Straehla and myself.

8 Q. And who are the other officers or directors of
9 Mammoth Energy Partners, LLC?

10 A. Mammoth Energy Partners, LLC, is an LLC, so it
11 doesn't have directors. The officers are Mr. Straehla and
12 myself as the CEO and CFO respectively.

13 Q. Mr. Straehla is the CEO?

14 A. Yes.

15 Q. Okay. With respect to Cobra Acquisitions, LLC, that
16 was an entity that was formed by Mammoth Energy Services, Inc.,
17 in 2017; is that correct?

18 A. No.

19 Q. When was it formed?

20 A. I believe that entity was formed in 2016.

21 Q. And who was it formed by?

22 A. It was formed by Mammoth Energy Partners.

23 Q. And at the time of its formation, who were its
24 officers?

25 A. As I recall, I believe the officers were Mr. Straehla

1 and myself as the CEO and CFO respectively.

2 Q. And is Cobra Acquisitions still an ongoing entity?

3 A. Yes.

4 Q. Are both you and Mr. Straehla still the CFO and CEO
5 respectively?

6 A. I believe you reversed those.

7 Q. Is Mr. Straehla still the CEO?

8 A. Yes.

9 Q. And are you still the CFO?

10 A. Yes.

11 Q. Okay. Are there any subsidiaries underneath Cobra
12 Acquisitions, LLC?

13 A. No.

14 Q. What does Cobra Acquisitions, LLC, operate to do
15 today?

16 A. Today, that entity still has a receivable from the
17 Puerto Rico Electric Power Authority and still has some
18 administrative functions relative to the work that was
19 performed in Puerto Rico.

20 Q. Back in 2017 and 2018?

21 A. I believe the work started in October of 2017. And
22 work in regards to power restoration in Puerto Rico ended in
23 March 2019.

24 Q. So if Cobra Acquisitions, LLC, ever receives the
25 money that PREPA owes it, do -- is the reason for its existence

1 terminated?

2 A. It's a hypothetical situation, so we'll evaluate that
3 entity and its existence, you know, as we need to.

4 Q. Is that the plan as we sit here today?

5 A. There's no plan as of today, so I can't answer a
6 hypothetical situation about facts uncertain in the future.

7 Q. Well, I'm gonna ask you to assume a number of
8 hypotheticals today. So my hypothetical is if it gets paid by
9 PREPA, is it contemplated that Cobra Acquisitions may shut
10 down?

11 MR. STUKENBERG: Go ahead and object, form.

12 A. Again, I'm not gonna speculate as to some
13 hypothetical situation that may or may not occur in the future.
14 I don't know. It's a hypothetical.

15 Q. (BY MR. WELMAKER) Has it been discussed?

16 A. No.

17 Q. Have Cobra Acquisitions' plans moving forward as of
18 today or at any time in the future been discussed?

19 A. I'm not sure I understand the question.

20 Q. Has anybody talked about what to do with Cobra
21 Acquisitions, LLC, moving forward?

22 A. In regards to what context?

23 Q. Operation as a business.

24 A. The entity continues to operate as a business today
25 as it has since formation, so I'm not understanding the context

1 of your question.

2 Q. How many employees does Cobra Acquisitions, LLC, have
3 right now?

4 A. Today, none.

5 Q. What was the maximum number of employees that it had
6 in 2017/2018?

7 A. I don't recall.

8 Q. Can you give me your best estimate?

9 A. I don't recall. I don't track head count by Cobra
10 Acquisitions, and I don't believe that was a topic that you
11 asked me to prepare for. So I don't recall off the top of my
12 head.

13 Q. Is it a number greater than 50?

14 A. Again, I don't recall.

15 Q. So you don't recall whether it's zero or whether it's
16 10,000?

17 A. It was greater than zero and less than 10,000, if
18 that's the contextual range that you'd like to put together.

19 Q. Is it greater than 50 at any time?

20 A. I don't recall whether it peaked 50 or not.

21 Q. Did it hit 40 at any time?

22 A. I don't recall.

23 Q. Did it have 30 employees at any one time?

24 A. I don't recall.

25 Q. Did it ever have employees that were stationed in

1 Puerto Rico in 2017 and 2018?

2 A. Yes.

3 Q. And how many employees did it have?

4 A. I don't know.

5 Q. If I told you about 15, would that jog your memory?

6 A. I don't recall how many employees that it had at any
7 point in time.

8 Q. Would you have any reason to argue with the number of
9 15 employees in Puerto Rico in 2017 and 2018?

10 A. I don't recall how many employees it had, so I don't
11 have that detail. It's not something that I looked at.

12 Q. All right. Let's talk Cobra Energy. What is Cobra
13 Energy's formal name, legal name?

14 A. As of what point in time?

15 Q. Well, let's start at 2017 and bring it up to today.

16 A. I believe in 2017 the formal name was Cobra Energy,
17 LLC.

18 Q. What about 2018?

19 A. 2018, I believe was the same.

20 Q. 2019?

21 A. 2019, I believe it held the same name as well.

22 Q. All right. What about 2020?

23 A. Sometime in, I think, 2020 or 2021, the name of that
24 entity was changed to Lion Power Services, LLC.

25 Q. All right. Hang on a second, Mr. Layton. I've

1 lost -- I lost volume.

2 MR. WELMAKER: Can anybody hear me?

3 MR. STUKENBERG: We can hear you.

4 Q. (BY MR. WELMAKER) Okay. Mr. Layton, can you hear
5 me?

6 A. Yes.

7 Q. Okay. All right. So you were saying sometime in
8 2020 or 2021 something happened?

9 A. I believe I stated that my recollection was that in
10 sometime in either 2020 or 2021 the name of Cobra Energy, LLC,
11 was changed to Lion Power Services, LLC.

12 Q. Was Lion Power Services, LLC, in existence prior to
13 that name change by Cobra Energy, LLC?

14 A. I'm not sure I follow the context of the question.
15 The name of the entity was changed at the point in time that I
16 referenced earlier.

17 Q. Was it changed to Lion Power Services, LLC, or was it
18 merged into Lion Power, LLC?

19 A. Same as my answer. The name was changed.

20 Q. To the best of your knowledge, did Lion Power
21 Services, LLC, exist prior to Cobra changing its name to Lion
22 Power Services?

23 A. I'm not sure I understand the question. But to the
24 extent that the question is whether or not there was an entity
25 named Lion Power Services prior to that date, the answer is no.

1 Q. Okay. That's what I was trying to figure out.

2 What was the basis for changing Cobra Energy,
3 LLC's, name to Lion Power Services, LLC?

4 A. No basis other than we decided to change the name of
5 the entity.

6 Q. Who came up with the name Lion Power Services?

7 A. I don't recall who came up with that name.

8 Q. Okay. So was there an entity in 2017 or 2018 called
9 Cobra TD or Cobra T and D?

10 A. I believe there was an entity at one point in time
11 that had that name.

12 Q. What name did it have specifically?

13 A. I don't recall the exact name. It contained T and D,
14 but I don't recall the exact naming.

15 Q. Okay. Was that a DBA, or was it an LLC or other
16 formal entity?

17 A. I don't recall.

18 Q. Do you know when it started its existence?

19 A. I don't recall the start of its existence. I recall
20 some naming feature that contained that in Circa 2017.

21 Q. Do you know who its officers or directors were?

22 A. No.

23 Q. Do you know what happened to Cobra T and D?

24 A. Not specifically, no. But it's no longer an entity
25 inside of the group of companies.

1 Q. And when you say "group of companies," are you or do
2 you agree that Mammoth Energy Services, Inc., is at the top of
3 that group of companies?

4 A. Mammoth Energy Services, Inc., is the ultimate parent
5 of a group of companies.

6 Q. Okay. And as the ultimate parent of a group of
7 companies, does it encompass all the companies that we have
8 talked about so far today?

9 MR. STUKENBERG: Objection, form.

10 A. I'm not sure which companies you're referencing.
11 We've referenced a couple of companies that are no longer in
12 existence, so I'm not sure I follow your question.

13 Q. (BY MR. WELMAKER) Before those companies that we've
14 referenced went out of existence, was it the parent of those
15 companies?

16 A. I believe so to the extent there was an entity that
17 was named Cobra T and D. As I stated earlier, I don't recall
18 whether that was an entity or whether that was a DBA or what
19 the situation was with that entity or name.

20 Q. Was Cobra Acquisitions a subsidiary of Mammoth Energy
21 Services, Inc.?

22 A. As I answered earlier, Cobra Acquisitions was a
23 subsidiary of Mammoth Energy Partners, LLC.

24 Q. Was it also a subsidiary of Mammoth Energy Services,
25 Inc.?

1 A. Cobra Acquisitions was wholly owned by Mammoth Energy
2 Partners, LLC.

3 Q. And Mammoth Energy Partners, LLC, is wholly owned by
4 Mammoth Energy Services, Inc.; is that correct?

5 A. That's correct.

6 Q. Okay. When we talk about 5 Star Electric, LLC, and
7 Higher Power Electrical, LLC, I'm just going to refer to them
8 by their shorthand names. Is that okay with you? Can we have
9 that agreement?

10 A. Sure, that's fine with me.

11 Q. Okay. And you've had enough depositions taken where
12 I feel like we don't need to go over the standard ground rules
13 to not talk when I'm talking, I won't talk when you're talking
14 because it's hard for the court reporter to get it down. The
15 most important one, though, is that if I ask you a question and
16 you answer, I'm going to assume that you understand it.

17 Is that acceptable to you?

18 A. Sure.

19 Q. And if you don't understand a question, I'm more than
20 happy to rephrase it.

21 A. Okay.

22 Q. All right. So 5 Star, that 5 Star was established in
23 2017 -- well, let me strike that.

24 When did 5 Star move within the -- or come
25 within the Mammoth universe?

1 MR. STUKENBERG: Objection, form.

2 A. I'm not sure what the context of the Mammoth universe
3 is. 5 Star Electric was acquired by Cobra Acquisitions in
4 either, I think, June or July or thereabouts of 2017.

5 Q. (BY MR. WELMAKER) And was Higher Power also acquired
6 by Cobra Acquisitions in June or July of 2017?

7 A. No. That's incorrect. As I recall, Higher Power was
8 acquired, I think, in either March or April of 2017.

9 Q. By Cobra Acquisitions?

10 A. Yes.

11 Q. Okay. Once Cobra acquired 5 Star, did Cobra change
12 any officer positions or appoint any officers to 5 Star?

13 A. I'm not sure I follow the question.

14 Q. Who were the officers before -- for 5 Star, who were
15 the officers before their acquisition by Cobra Acquisitions?

16 A. Before the acquisition, I don't recall.

17 Q. Okay. Who were the officers in 5 Star after the
18 Cobra acquisition?

19 A. Following the acquisition, I believe the officers
20 were Mr. Straehla, myself and Mr. Whitsell.

21 Q. And Mr. Straehla would have been CEO; is that
22 correct?

23 A. Yes.

24 Q. And you would have been CFO?

25 A. Yes.

1 Q. And Whitsell would have been president?

2 A. He would have been either president or vice
3 president. I don't recall which.

4 Q. And following Higher Power's acquisition by Cobra
5 Acquisitions, LLC, who were the officers?

6 A. As I recall, the officers of Higher Power were
7 Mr. Straehla, myself and Mr. Malcolm.

8 Q. With Mr. Straehla being CEO, you being CFO and
9 Mr. Malcolm being what?

10 A. As I recall, Mr. Malcolm was either president or vice
11 president. I don't recall which.

12 Q. Is 5 Star still a functioning entity?

13 A. I don't know what the context of a functioning entity
14 is, but 5 Star is still an operating entity, yes.

15 Q. And where does it primarily operate?

16 A. That entity operates in Kentucky, Indiana, Ohio,
17 Georgia, Utah and probably a few other states.

18 Q. Do you know how many employees it currently has?

19 A. I believe it has currently somewhere between 4' and
20 500 employees.

21 Q. And with respect to Higher Power, where does it
22 currently operate?

23 A. Higher Power currently operates in Oklahoma as well
24 as in Texas.

25 Q. Approximately how many employees does it have?

1 A. Today has approximately 50 employees.

2 Q. All right. And just so we can get names correct, I
3 want to ask you about a couple of names and their titles.

4 The first is Jeff Beagle. Is Jeff Beagle still
5 employed with any of the companies that we've discussed?

6 A. No.

7 Q. When did his employment separate?

8 A. I don't recall the exact date.

9 Q. Was it within the last year?

10 A. No.

11 Q. Why did Mr. Beagle separate from whatever entity he
12 was working for?

13 A. As I recall, he was offered another opportunity with
14 another entity.

15 Q. Which of the entities that we've already discussed
16 did Jeff Beagle perform services for?

17 A. What's -- what's the context of services? If you're
18 asking who his employing entity was, he was employed by Mammoth
19 Energy, Inc.

20 Q. Was he ever employed by any of the other entities
21 that we discussed?

22 A. No.

23 Q. What was his position with Mammoth Energy, Inc.?

24 A. I believe his title was director of human resources.

25 Q. What about Alexander Kalman, is he still employed by

1 any of the entities that we've discussed?

2 A. No.

3 Q. When did his employment terminate?

4 A. I don't recall the date.

5 Q. Do you know why it terminated?

6 A. I don't recall the specifics of his departure.

7 Q. Do you recall the generalities of his departure?

8 A. I don't recall why or when he left. He's no longer
9 an employee.

10 Q. Did he leave on his own volition, or was he fired?

11 A. I don't recall the specifics.

12 Q. Who did Mr. Kalman -- who was Mr. Kalman employed by?

13 A. He was employed by Mammoth Energy, Inc.

14 Q. Let me go back up to Mammoth Energy Services, Inc.

15 There is some -- we've got you and Mr. Straehla as the
16 officers, and then we've got a number of directors. At any
17 point in time from 2016 up through today, has Mammoth Energy
18 Services, Inc., had any employees?

19 A. Mammoth Energy Services, Inc., since its formation
20 has never had any employees.

21 Q. And with respect to Mammoth Energy, Inc., from 2016
22 through today, has it ever had any employees?

23 A. Yes.

24 Q. How many does it have today?

25 A. Approximately 50 to 60.

1 Q. And back when everyone was in Puerto Rico in 2017 and
2 2018, how many employees did it have?

3 A. I'm not sure I understand the question or what the
4 relation to Puerto Rico has to do with anything as it relates
5 to the time frame.

6 Q. With respect to Mammoth Energy, Inc., how many
7 employees did it have during the time period of November 2017
8 through July 22, 2018?

9 A. I don't recall the specific number.

10 Q. Do you have any idea?

11 A. In regards to range, likely somewhere between 50 and
12 80.

13 Q. Okay. What was Mr. Kalman's title while he was
14 employed by Mammoth Energy, Inc.?

15 A. I believe, as I recall, his title was payroll
16 coordinator.

17 Q. And did he coordinate payroll for 5 Star and for
18 Higher Power?

19 A. As I recall, both of those entities had payroll
20 clerks inside of the respective entities.

21 Q. Okay. Aside from that, did he coordinate payroll for
22 Higher Power and 5 Star?

23 MR. STUKENBERG: Object to form.

24 A. I don't understand what the context of coordination
25 is.

1 Q. (BY MR. WELMAKER) Okay. Well, you told me he was a
2 payroll coordinator. Did he perform any of the duties
3 associated with the function of a payroll coordinator for
4 Higher Power or 5 Star?

5 A. Again, I believe that both Higher Power and 5 Star
6 had payroll coordinators or payroll clerks inside of each of
7 the respective entities.

8 Q. Okay. Did Mr. Kalman assist those payroll
9 coordinators or clerks with their duties?

10 A. I'm not sure what the context of "assist" is. As
11 Mr. Kalman was --

12 Q. Everyday normal meaning of the word "assist."

13 A. Can I answer my question before you talk over me,
14 please?

15 Q. No. Just answer my question or we will be here all
16 day long.

17 A. If you're going talk over me, then we're going to
18 call a soon end to this because --

19 Q. Oh, are you going to call an end to it, Mr. Layton?
20 Are you going to shut it down?

21 MR. STUKENBERG: Doug, in your rules, you said
22 you would not talk over Mr. Layton and Mr. Layton would not
23 talk over you. He was in the middle of answering his question.
24 If you don't like his answer, you can try to clarify it
25 obviously or ask a different question. But you should give him

1 the courtesy to allow him to answer.

2 MR. WELMAKER: I'm not gonna sit here and let
3 Mr. Layton give speeches the entire day and burn my time. I'm
4 just not gonna do it.

5 MR. STUKENBERG: I don't think he was giving a
6 speech. I think he was giving context to his answer. But we
7 can -- if you want to ask him the question, he'll give you his
8 answer.

9 MR. WELMAKER: Can you read back the question I
10 just asked, Court Reporter, Ms. Ashman?

11 (Whereupon, the requested portion of the
12 transcript was read.)

13 Q. (BY MR. WELMAKER) And do you have an answer for that
14 question, Mr. Layton?

15 A. Yes. I'm not sure what the context of "assist" means
16 in Mr. Kalman's role. He was a resource that was available to
17 both 5 Star and Higher Power to answer questions that they may
18 have in regards to processing payroll.

19 As I recall, both Higher Power and 5 Star had
20 payroll clerks inside of those entities that were responsible
21 for the day-to-day processing of payroll.

22 Q. Did Mr. Kalman ever formulate policy or procedures to
23 be used by Higher Power or 5 Star?

24 A. Formulate policy, no. That would be above his pay
25 grade, so to speak.

1 Q. Okay. Who would have formulated policy for Higher
2 Power or 5 Star?

3 A. Higher Power or 5 Star policy would have come from
4 the officers inside of those respective entities.

5 Q. So you and Mr. Straehla?

6 A. And I believe I referenced the other officers inside
7 of those entities earlier.

8 Q. And does that include payroll policies?

9 A. Payroll policies would be included inside of that
10 structure, if you will.

11 Q. Who is Keith Ellison?

12 A. Keith Ellison is an individual.

13 Q. Is he a human being? I mean, you can answer like
14 that too, and we can be here all day long. I didn't ask if he
15 is an individual. Who is he with? I mean, do I have to spell
16 out all my questions for you?

17 MR. STUKENBERG: Doug, I think if you want to
18 ask a question and be precise, then ask the question and
19 Mr. Layton will answer it.

20 MR. WELMAKER: It gets to a point where I don't
21 have to ask if somebody is a human being or an individual or an
22 animal or a vegetable or a mineral. I've got basic knowledge
23 that Mr. Ellison is an individual. I mean, we can be here all
24 day long.

25 MR. STUKENBERG: Doug, again, if you just want

1 to ask your questions, Mr. Layton will answer.

2 Q. (BY MR. WELMAKER) Who is Keith Ellison as he relates
3 to any of the entities that we have spoken about today?

4 A. In regards to which time frame?

5 Q. From 2017 through today.

6 A. In 2017, Mr. Ellison would have been the president,
7 as I recall, of both Cobra Acquisitions as well as Cobra
8 Energy. I believe he held those roles in 2018 as well as at
9 least some portion of 2019. He left employment, I believe, in
10 sometime in the back half of 2019. Has not held a role for any
11 of the entities discussed today since that time frame.

12 Q. Before he became president of Cobra Acquisitions
13 and/or Cobra Energy, where was he employed, if you know?

14 A. I don't recall.

15 Q. In 2017, when he became president of Cobra
16 Acquisitions, who else was employed by Cobra Acquisitions?

17 A. At that time, I don't recall who the employees were
18 of Cobra Acquisitions.

19 Q. Were there any employees of Cobra Acquisitions at
20 that time?

21 A. Again, I don't recall the specific head count or
22 employees of Cobra Acquisitions going back seven years.

23 Q. In 2017 -- let me strike that.

24 (Exhibit 2 marked.)

25 Q. (BY MR. WELMAKER) I'm gonna show you Exhibit

1 Number 2, which is just a press release I pulled off the
2 Mammoth Energy Services website, and ask you to read that,
3 please. It's got three pages. So if you want me to flip to
4 pages 2 and 3, please just let me know.

5 MR. STUKENBERG: Give me just a second, Doug, if
6 you would.

7 MR. WELMAKER: Yeah. Sure.

8 MR. STUKENBERG: Is it Exhibit 2?

9 MR. WELMAKER: Yeah. Can you guys see it up on
10 the screen?

11 THE WITNESS: Yes.

12 MR. STUKENBERG: So I don't show that this was
13 produced, Doug. Am I wrong?

14 MR. WELMAKER: No, it was not produced. I just
15 pulled it up yesterday or the day before.

16 MR. STUKENBERG: I'm going to go ahead and
17 object to any questions based on the fact that it wasn't
18 produced prior to the deposition. But you can go ahead and ask
19 questions.

20 Q. (BY MR. WELMAKER) Do you need to see the second or
21 third page, Mr. Layton?

22 A. Yes, that would be great.

23 Q. All right. Tell me when you're ready.

24 A. I'm ready. Okay. I'm ready for the next page.

25 Q. Oh, sorry.

1 A. Okay.

2 Q. Did you have anything to do with the writing of this
3 press release?

4 A. I'm not sure what the context of anything to do with
5 it means. I was aware of it, certainly.

6 Q. Did you provide input into it?

7 A. I don't recall.

8 Q. Did you review it before it was released?

9 A. I likely saw it before it was released, yes.

10 Q. Did you edit it?

11 A. I don't recall.

12 Q. Is this something that you would have edited?

13 A. Again --

14 MR. STUKENBERG: Objection, form.

15 A. -- I don't recall the specificity of this document in
16 whether or not I edited the document.

17 Q. (BY MR. WELMAKER) And so Mammoth Energy Services,
18 Inc., is traded on Nasdaq, correct?

19 A. Yes.

20 Q. And symbol is TUSK, right?

21 A. Yes.

22 Q. Okay. So it says, Mammoth Energy Services, Inc.,
23 today announced that its wholly owned subsidiary, Cobra
24 Acquisitions, signed a contract to aid in the restoration of
25 utility infrastructure on the island of Puerto Rico.

1 Do you agree with that statement?

2 A. Document states what it states.

3 Q. Do you have any reason to doubt what it states?

4 A. Again, the document states what it states.

5 Q. I'm asking you if you have any reason to doubt what
6 it states.

7 A. The document states what it states.

8 Q. I'm asking you if you have any reason to doubt what
9 it states.

10 A. I can see what it states. It's on the screen.

11 Q. Do you have any reason to doubt what it states?

12 A. The document states what it states.

13 Q. Do you have any reason to doubt what it states?

14 A. Again, the document's on the screen, and it states
15 what it states.

16 Q. Do you have any reason to doubt what it states? Is
17 there anything in here that jumps out at you as being incorrect
18 or improper in any way?

19 A. There's nothing in here that's improper.

20 Q. Is there anything in there that's wrong or
21 untruthful?

22 A. There's nothing in here that's untruthful.

23 Q. And then it states, Arty Straehla, Mammoth's chief
24 executive officer stated: We are honored to be chosen to help
25 restore the electric utility infrastructure for the residents

1 of Puerto Rico.

2 Do you see that highlighted portion?

3 A. Yes, I do.

4 Q. Okay. So why is Mr. Straehla referring to both Cobra
5 and Mammoth Energy Services, Inc., as "we"? Was this contract
6 awarded to Mammoth Energy Services, Inc.?

7 A. The release says clearly that the contract was
8 awarded to Cobra Acquisitions.

9 Q. Then why is Mr. Straehla saying, as Mammoth's chief
10 executive officer, we are honored to be chosen to help restore
11 the electrical utility infrastructure?

12 A. As I stated earlier, Mr. Straehla is also the chief
13 executive officer of Cobra Acquisitions.

14 Q. Did Mr. -- when did Mr. Straehla become chief
15 executive officer of Cobra Acquisitions?

16 A. As I recall, it would have been sometime late 2016.

17 Q. And when was Cobra Acquisitions formed?

18 A. Sometime in late 2016.

19 MR. STUKENBERG: Doug, we've been going about an
20 hour. Do you want to take a break just when you get to a
21 stopping point? You can finish with this document if you want
22 to or just whenever you get to somewhere where it's good to
23 take a break.

24 MR. WELMAKER: Yeah, let me just do this one.
25 It's another press release. It shouldn't be long.

1 MR. STUKENBERG: Sure.

2 (Exhibit 3 marked.)

3 Q. (BY MR. WELMAKER) I've marked this as Exhibit 3.
4 It's another press release I pulled from the Mammoth Energy
5 Services, Inc., website. And this one is 15 pages long. But
6 you have it in front of you. I'm just gonna ask you about the
7 second page.

8 MR. STUKENBERG: So again, we'll object to
9 questions about any exhibits that were not produced prior to
10 the deposition. Subject to those objections, Mr. Layton can
11 answer questions about it.

12 Q. (BY MR. WELMAKER) Tell me when you are ready,
13 Mr. Layton.

14 A. I'm ready.

15 Q. Okay. So on page 2, I've got it highlighted, and it
16 says, During 2017, Mammoth broadened -- well, first of all,
17 let's go back.

18 This is a press release that Mammoth Energy
19 Services, Inc., released dated February 21, 2018. It says that
20 on the top of the page.

21 Do you see that?

22 A. Yes, I do.

23 Q. Do you have any reason to doubt that what I've just
24 said is incorrect or improper?

25 A. Not that I see.

1 Q. On the second page, the highlighted portion says,
2 During 2017, Mammoth broadened its services offerings by
3 expanding into the utility infrastructure business with the
4 formation of Cobra Acquisitions, LLC, and the acquisitions of
5 Higher Power Electrical in April 2017 and 5 Star Electric, LLC,
6 in July 2017.

7 Did I read that correctly?

8 A. Yes.

9 Q. Is that a true statement?

10 A. Yes.

11 Q. Then it says, Effective October 19, 2019, Cobra
12 entered into an emergency master services agreement with PREPA
13 for repairs to PREPA's electrical grid as a result of Hurricane
14 Maria.

15 Is that a true statement?

16 A. Yes.

17 Q. Okay. Did Mammoth ever report any of the proceeds
18 that Cobra Acquisitions received from this contract with PREPA
19 on its balance sheet or any other public filing?

20 MR. STUKENBERG: Sorry. Would you repeat that?
21 You kind of broke up in the middle a little bit.

22 MR. WELMAKER: Sure.

23 Q. (BY MR. WELMAKER) Did Mammoth include any of the
24 monies Cobra Acquisitions received from PREPA on its balance
25 sheet or any other public filing?

1 And when I say "Mammoth," I mean Mammoth Energy
2 Services, Inc.

3 A. The financial position and result of operations of
4 Cobra Acquisitions would be included in Mammoth Energy
5 Services, Inc.'s, financial statements.

6 Q. All right. Would the same be true for any monies
7 received by 5 Star being reported by Cobra Acquisitions, LLC,
8 on any kind of a balance sheet or any other public filing?

9 A. I'm not sure I understand the question.

10 Q. Okay. Did Cobra Acquisitions, LLC, ever report on a
11 balance sheet or any other public filing proceeds that 5 Star
12 or Higher Power received as a result of the work in Puerto
13 Rico?

14 A. I don't recall any Cobra Acquisitions, LLC, public
15 filings of financial statements.

16 Q. Okay.

17 MR. WELMAKER: All right. Let's take -- well,
18 how long do you want to take?

19 MR. STUKENBERG: How about ten minutes?

20 MR. WELMAKER: That's fine.

21 (Break from 10:40 a.m. to 10:55 a.m.)

22 Q. (BY MR. WELMAKER) Okay. Mr. Layton, can you hear me
23 okay?

24 A. Yes.

25 Q. By the way, are you in Oklahoma today?

1 A. Yes, I am.

2 (Exhibit 4 marked.)

3 Q. (BY MR. WELMAKER) I'm showing you what I've marked
4 as Plaintiff's Exhibit Number 4. This is the -- another press
5 release from the Mammoth Energy Services, Inc.'s, website.

6 MR. STUKENBERG: And again, we'll object to any
7 documents that were not produced prior to the deposition.
8 Subject to those objections, Mr. Layton can answer questions
9 about it.

10 Q. (BY MR. WELMAKER) All right, Mr. Layton. You are
11 free to review this, and let me know when you are done.

12 A. Okay. Can I see the next page, please?

13 Okay.

14 Q. Okay. This is a press release dated June 17, 2019.
15 Did you have anything to do with the creation of this press
16 release?

17 A. I'm not sure what that context means. I likely saw
18 the press release before it was issued.

19 Q. Did you edit it before it was issued?

20 A. I have no recollection one way or the other.

21 Q. Okay. It says at the top, Mammoth issues statement
22 regarding its work in Puerto Rico.

23 Do you see that?

24 A. Yes.

25 Q. And so Mammoth did do work in Puerto Rico; is that

1 correct?

2 A. That's not what the document states.

3 Cobra is a wholly owned subsidiary of Mammoth,
4 and Cobra had the contract and performed work in Puerto Rico.

5 Q. Why does it say, Mammoth issues statement regarding
6 its work?

7 A. Again, Cobra is a wholly owned subsidiary, so its
8 operations and statement of financial position are included
9 inside of Mammoth's results.

10 Q. Okay. So work done by Cobra Acquisitions is
11 effectively considered work done by Mammoth Energy Services,
12 Inc.?

13 A. Again, the work performed by Cobra was performed by
14 Cobra. I'm not sure what connection you're trying to make.
15 Cobra is a wholly owned subsidiary of Mammoth Energy Services,
16 Inc., through Mammoth Energy Partners, LLC.

17 Q. Why wouldn't it say, Mammoth issues statement
18 regarding Cobra's work in Puerto Rico? Would that be a more
19 accurate statement?

20 A. It's a different statement. It could have stated
21 that. The document states what it states. It's not
22 misleading.

23 (Exhibit 5 marked.)

24 Q. (BY MR. WELMAKER) Okay. And this is going to be the
25 final document that I haven't produced. But I did produce it

1 in the other arbitration, and I'm sure that you're familiar
2 with the contract between Cobra Acquisitions and PREPA.

3 Have you ever seen that document before?

4 A. Which document are you speaking about? I can't see
5 anything other than a press release on the screen.

6 Q. I'm referring to Exhibit 5, which, to my
7 understanding, is the document that was signed with PREPA that
8 Mr. Ellison later described as being awarded to Cobra, et al.

9 Have you seen this document before?

10 MR. STUKENBERG: And again, we'll make the same
11 objection as to questions pertaining to documents that weren't
12 produced in this litigation. Subject to those objections,
13 Mr. Layton can answer your questions.

14 A. Yes, I believe I've seen this document before.

15 Q. (BY MR. WELMAKER) Okay. Did you help draft it?

16 A. We can't tell who drafted this particular document.

17 Q. Were you asked to help draft the document before it
18 was formalized?

19 A. Again, I'm not sure who held the pen on the drafting.
20 I was certainly involved in the negotiation of terms inside of
21 the document before it was executed. But in regards to who
22 actually drafted it, I don't have that visibility.

23 Q. But you were asked to provide input into it?

24 A. I was aware of the negotiation. And, yes, I provided
25 some input in regards to the negotiation of the document.

1 Q. Do you recall what input you provided?

2 A. Not specifically, no.

3 Q. Was there a presentation made by Mammoth or Cobra to
4 PREPA prior to this document being signed?

5 A. In regards to what context?

6 Q. Services that Mammoth or Cobra could offer PREPA for
7 the restoration process.

8 A. Mammoth in regards -- I assume you're talking about
9 Mammoth Energy Services, Inc.?

10 Q. I don't know. I don't know what you are talking
11 about.

12 A. I can't answer your question without some level of
13 specificity.

14 Q. Did any Mammoth entity or any Cobra entity make a
15 presentation to PREPA prior to this contract being signed about
16 the services that would be offered for the restoration project
17 in Puerto Rico?

18 A. I'm not sure I understand your question. I think,
19 you know, to try and help, Cobra Acquisitions held a meeting,
20 at least one, with PREPA in regards to discussing the
21 capabilities of Cobra Acquisitions. But again, Mammoth Energy
22 Services, Inc., has never had any employees, so there's no
23 presentation from Mammoth Energy Services, Inc., to PREPA.

24 I'm not sure what the context of a presentation
25 is, but there were certainly a dialogue prior to the

1 negotiation of this contract in regards to the capabilities of
2 Cobra Acquisitions.

3 Q. All right. Was a presentation made by Mammoth
4 Energy, Inc., to PREPA prior to this contract being signed?

5 A. I'm not seeing any documentation or aware of any
6 presentation from Mammoth Energy, Inc., to PREPA.

7 Q. All right. This is page 34, if you want to flip to
8 it. It's the signature page for the contract. And my question
9 is: Why is Keith Ellison not signing this document?

10 A. Mr. Straehla executed the document as the CEO of
11 Cobra Acquisitions.

12 Q. Why didn't Mr. Ellison execute it?

13 A. I can't answer that. I can just tell you that
14 Mr. Straehla executed it as the CEO of Cobra Acquisitions.

15 Q. Page 35 of the 52-page document says, The
16 contractor's proposal is attached as Exhibit A. And this next
17 page looks like a copy of a slide show.

18 Have you ever seen this document before?

19 A. I've seen a copy of this presentation, yes.

20 Q. Okay. Who put this presentation together?

21 A. In regards to who put it together, I don't recall who
22 put it together or have any visibility on that.

23 Q. Did you ever review it before it was presented to
24 PREPA?

25 A. View it, no.

1 Q. Hear about it, edit it?

2 A. I didn't review it, so had no ability to edit it.

3 Q. Were you aware of its existence before it was
4 presented to PREPA?

5 A. No.

6 Q. How did you find out that it was going to be
7 presented to PREPA?

8 A. I don't believe I found out about it until it was an
9 exhibit to the agreement, so I don't believe I had any
10 visibility on this presentation prior to the agreement that was
11 entered into between Cobra and PREPA.

12 Q. Okay. When it says Mammoth Energy on here, which
13 entity is that talking about?

14 A. I don't believe that's referencing any entity. This
15 proposal is from Cobra as a subsidiary of Mammoth Energy
16 Partners, LLC.

17 Q. Where does it say Mammoth Energy Partners, LLC, on
18 there?

19 A. It doesn't say it anywhere on there.

20 Q. Okay. So we've got a logo of Mammoth Energy.
21 Underneath it, it says, Cobra Energy Services. I don't know
22 that we've talked about Cobra Energy Services yet.

23 What -- is that an actual legal entity?

24 A. I don't believe so.

25 Q. Was it a trade name or a DBA?

1 A. Not that I'm aware of.

2 Q. Who was involved with Cobra Energy Services?

3 A. Again, I don't believe that was an entity or a trade
4 name.

5 Q. Why is it being used here?

6 A. Again, I didn't formulate this document, so I can't
7 answer that question.

8 Q. So Cobra Energy Services had no employees then; is
9 that correct?

10 A. Given that it's not an entity or a trade name, then,
11 yes, one can -- one can come to the conclusion that it had no
12 employees.

13 Q. The next page says, Cobra Resources. And at the
14 bottom, it says, Mammoth Energy Services (Nasdaq TUSK.)

15 Would that be referring to Mammoth Energy
16 Services, Inc.?

17 A. Yes, that's the parent and publicly traded entity.

18 Q. And that's the Nasdaq symbol for Mammoth Energy
19 Services, Inc., also, isn't it?

20 A. Yes.

21 Q. Why is Mammoth Energy Services' name at the bottom of
22 this presentation?

23 A. Again, wasn't responsible for the formulation of this
24 document, so I can't put myself in the head of whoever put this
25 together.

1 Q. Would this have been put together from a high-level
2 individual at Mammoth or Cobra?

3 A. Again, there are no employees at Mammoth Energy
4 Services, Inc., so there's nobody there to put it together.
5 I've answered a couple of times now. I don't know who put this
6 together, so I can't speculate.

7 Q. One of the next pages shows a picture of some of the
8 barges that were apparently going to be used, some of the
9 linemen. Who paid for the rental or use of the barges?

10 A. In regards to the barges that were utilized to house
11 linemen, those barges were chartered by and paid for by Cobra
12 Acquisitions.

13 Q. Okay. And what about the food that was provided from
14 the barges, same answer?

15 A. I'm not sure I understand the question. There were
16 kitchens that were in place on the barges, and the food costs
17 were borne by Cobra Acquisitions to the extent that those
18 cafeterias produced food.

19 Q. How much did the -- what was the total capital outlay
20 for the use of the barges during the 2017/2018 time period?

21 A. In regards to the total charter amount, I don't
22 recall off the top of my head.

23 Q. Who paid for that total charter amount?

24 A. I answered that previously, Cobra Acquisitions.

25 Q. And did Cobra Acquisitions do that with funds

1 provided by Mammoth Energy Services, Inc.?

2 A. No. Cobra Acquisitions had its own inflow of cash.
3 So certainly was receiving during that time period. Cash flow
4 from PREPA associated with the two contracts in place between
5 Cobra Acquisitions and PREPA.

6 Q. Did Mammoth Energy Services, Inc., ever provide funds
7 to Cobra Acquisitions in the 2017/2018 time period?

8 A. Mammoth Energy Services, Inc., no, I don't believe
9 so.

10 Q. Did Mammoth Energy, Inc., ever provide funds to Cobra
11 Acquisitions during that same time period?

12 A. Mammoth Energy, Inc., no, I don't believe so.

13 Q. Did Mammoth Energy Partners provide funds to Cobra
14 Acquisitions during that time period?

15 A. Mammoth Energy Partners may have -- may have provided
16 advances of cash and received prepayments of cash from Cobra
17 Acquisitions during time frame.

18 Q. Do you know how much cash was advanced?

19 A. No.

20 Q. On the 47th page, we have another Mammoth Energy
21 logo. Underneath it, it says, Keith Ellison, President, Cobra
22 Energy. Keithellison@mammothenergy.com.

23 Was Mr. Ellison using a Mammoth Energy email
24 address?

25 A. That would appear to be the case.

1 Q. Was there ever a Cobra Acquisitions' email address?

2 A. I believe there was, yes.

3 Q. Do you know if Mr. Ellison ever used that address?

4 A. I don't know whether Mr. Ellison had a Cobra
5 Acquisitions email or not.

6 Q. Why does it state the Mammoth Energy Services
7 corporate office underneath the phone number there?

8 A. Again, wasn't involved in the preparation of this
9 document, so can't put myself in the head of whoever put this
10 document together.

11 Q. And then at the bottom of it, it has
12 Mammothenergy.com as a website, correct?

13 A. The document states what it states.

14 Q. Okay. And if we go to Mammothenergy.com, whose
15 website is that?

16 A. That website would have links to a number of legal
17 entities, so I'm not sure I understand the question.

18 Q. If we go to Mammothenergy.com, are we gonna see that
19 the company referenced there is Mammoth Energy Services, Inc.?

20 A. Again, there are going to be a number of companies
21 referenced there. Mammoth Energy Services, Inc., is the
22 parent. There are a number of subsidiaries underneath Mammoth
23 Energy Services, Inc., that would also have places or
24 references contained from that web page.

25 Q. And when I go to that website, it says, Mammoth

1 Energy remains unpaid by PREPA for vital Hurricane Maria
2 recovery work.

3 Is that still the case?

4 A. I don't have the website up, so I can't see what
5 you're looking at.

6 Q. But what I'm asking you, though, is: Is Mammoth
7 Energy still not paid by PREPA for work performed during
8 Hurricane Maria?

9 A. PREPA still owes Cobra Acquisitions approximately
10 \$350 million as of the last publicly released information.

11 Q. And when was that information released?

12 A. That would have been released in April.

13 Q. So the contract was signed between PREPA and Cobra
14 Acquisitions when?

15 A. In October of 2017.

16 Q. All right. I'm showing you what's been marked as
17 Exhibit 6.

18 (Exhibit 6 marked.)

19 Q. (BY MR. WELMAKER) Which is Bates 2373 through 2375.
20 And feel free to review it on your screen or have me move
21 through it. And let me know when you're -- when you have
22 familiarized yourself with this document.

23 A. Which document is this again?

24 Q. This is Exhibit 6, Bates-stamped 2373 through 75.

25 A. I'm going to pull that up on my screen briefly just

1 so I can flip through it.

2 Q. Okay. Sure.

3 A. Okay.

4 Q. All right. What I'd like to do is direct your
5 attention to the very last page and -- well, let's go to the
6 page before just so we can see who the email is from.

7 At the bottom -- and it's highlighted -- it's
8 from Keith Ellison to Ken Kinsey with -- well, let me ask you:
9 Who is Ken Kinsey with at this point in time?

10 A. At that particular time, I think Mr. Kinsey was vice
11 president of operations for Cobra Acquisitions.

12 Q. Why is his email kenkinsey@cobratd.com?

13 A. I can't answer why he utilized that email.

14 Q. Did he have more than one?

15 A. I would venture to guess that he likely had more than
16 one email address, yes.

17 Q. Okay. And certainly, you had more than one email
18 address, correct?

19 A. For which time period?

20 Q. 2017/2018.

21 A. Yes.

22 Q. Did you have a specific email for each of the
23 companies that you were CFO for?

24 A. No.

25 Q. Was there any rhyme or reason to when you used a

1 particular email over another?

2 A. I guess that would depend on the particular
3 circumstance.

4 Q. For example, if you're dealing with a Mammoth Energy
5 issue, are you going to use a Stingray email?

6 A. Which Mammoth Energy entity or issue are you
7 referencing?

8 Q. Either. Any.

9 A. It would depend on the particular facts and
10 circumstances.

11 Q. So if you're talking to someone from Mammoth Energy,
12 Inc., about pay on Puerto Rico in the Puerto Rico time period
13 that we're concerned with, are you going to use a particular
14 email address, or does it matter to you?

15 A. I suppose it would depend on the circumstances and,
16 you know, I don't control who emails me on which email address.
17 So there are a number of variables.

18 Q. Like you might just be replying to something?

19 A. I don't follow the statement.

20 Q. It's not worth going into.

21 So Robert Malcolm is on this email chain. He is
22 the president of Higher Power?

23 A. That's correct.

24 Q. Who is Steve Wolf?

25 A. Steve Wolf was a salesperson for either Cobra Energy

1 or Cobra Acquisitions. I don't recall which.

2 Q. Why is he on this email?

3 A. I didn't send the email, so I can't answer that.

4 Q. Who is Ken Godwin?

5 A. Ken Godwin was a superintendent for Higher Power.

6 Q. And who is Jared Chappell?

7 A. Jared Chappell was an accountant employed by Mammoth
8 Energy, Inc.

9 Q. All right. On the next page, we have Mr. Ellison
10 stating that, We've been awarded 120-day minimum contract for
11 250 linemen in Puerto Rico. And he lists out a pay scale here.
12 He says, We are paying the following.

13 Can you read what I've highlighted there out
14 loud?

15 A. I believe the context of a pay scale is incorrect.
16 But the document states what it states in regards to positions
17 and budgeted amounts.

18 Q. All right. Where does it say on here that these are
19 budgeted amounts?

20 A. Subsequent to this email, Mr. Ellison and myself,
21 along with Mr. Beagle and I believe Mr. Kinsey, had a
22 conversation about these budgeted amounts where Mr. Ellison
23 conveyed the budgeted amounts and his desire for us to develop
24 a pay plan.

25 Q. Okay.

1 MR. WELMAKER: Objection, nonresponsive.

2 Q. (BY MR. WELMAKER) Where does it say on here that
3 these are budgeted amounts?

4 A. Again, it doesn't say on there. That was through a
5 subsequent conversation between Mr. Ellison, myself, Mr. Beagle
6 and Mr. Kinsey.

7 Q. All right.

8 MR. WELMAKER: Objection to everything after the
9 word "here."

10 Q. (BY MR. WELMAKER) How much does it say that a GF is
11 going to get?

12 A. On this particular document, the budgeted amount for
13 a general foreman is \$1400 per day.

14 Q. All right. Again, where does it say budgeted?

15 A. Again, the budgeted amount came from a subsequent
16 conversation between Mr. Ellison and myself, as well as
17 Mr. Beagle and Mr. Kinsey.

18 Q. All right.

19 MR. WELMAKER: Objection, nonresponsive.

20 Q. (BY MR. WELMAKER) Would you read me what is
21 highlighted, please?

22 A. The document states what it states.

23 Q. I'm asking you to read it into the record.

24 A. This subset of the document states: We are paying
25 the following: GF, \$1400 per day. Foreman, \$1,250 per day.

1 Journeyman/lineman \$1,000 per day. A class, 900. B class,
2 800. Hot apprentice, 700. Apprentice/groundman, looks like
3 600. It's really small on my screen.

4 Q. Okay. So when it says "per day," does that mean if
5 you show up and work any amount of time, you're going to get
6 the amount listed in this highlighted portion?

7 A. Again, the document states what it states. I can
8 talk about process-wise and my personal involvement in
9 conversations with Mr. Ellison.

10 Q. I'm just asking you to confine your opinion based on
11 what we're looking at right here.

12 A. The document states what it states. I can talk to
13 you about process, the development of the pay plan as well as
14 individual conversations I had with Mr. Ellison, Mr. Beagle and
15 others.

16 Q. Are these -- is this highlighted portion what we
17 would consider Puerto Rico pay?

18 A. These are budgeted amounts for positions relative to
19 restoration work performed in Puerto Rico for which we sought
20 advice from external counsel and used these budgeted amounts to
21 derive a pay plan.

22 MR. WELMAKER: Objection, nonresponsive to your
23 entire answer.

24 Q. (BY MR. WELMAKER) On the page before that, we see
25 that Jared Chappell takes Mr. Ellison's email and forwards it

1 to Mr. Beagle and Mr. Kalman.

2 Do you see that?

3 A. Yes.

4 Q. Why did Mr. Chappell forward this to Mr. Beagle and
5 Mr. Kalman?

6 A. I'm not anywhere on this email, so I can't speculate
7 as to why Mr. Chappell forwarded the email.

8 Q. Okay. Have you ever seen this email before?

9 A. I have. And I can talk about process and how these
10 budgeted amounts evolved into a number of discussions, but I'm
11 not anywhere on this email chain.

12 Q. So the answer to my question is you don't know why
13 Mr. Chappell sent this to Mr. Beagle or Mr. Kalman?

14 A. I believe I've answered that I'm not anywhere on this
15 email chain, so I can't speculate as to why Mr. Chappell
16 forwarded this email.

17 Q. All right. The next email in the middle of the page
18 says from Jeff Beagle: Ken, below are the intended rates we'd
19 like to mirror. Working seven days a week -- well, let me back
20 up. It says: Below are the intended day rates we'd like to
21 mirror.

22 So is it your contention that we are not talking
23 about day rates at this point in time?

24 A. So the email states what it states. Contextually and
25 process-wise, Mr. Beagle reached out to Mr. Broussard at my

1 direction to take the budgeted amounts and come up with an FLSA
2 compliant pay plan, which Mr. Beagle references in the last
3 sentence of this email. So at this particular time, no
4 decision has been made as to what that pay plan will look like.

5 Q. At this particular time, then, how do you know that
6 they're budgeted rates and not simply day rates?

7 A. At this particular time, as I mentioned earlier, I
8 had been personally involved in a conversation with Mr. Ellison
9 and Mr. Beagle and Mr. Mr. Kinsey in regards to these budgeted
10 amounts, which is why Mr. Beagle is reaching out to
11 Mr. Broussard. He's doing that at my direction.

12 Q. If these were budgeted day rates, why didn't they
13 just use the word budgeted day rates?

14 A. Again, it's Mr. Ellison's email. He conveyed to me
15 that those were budgeted amounts, and we took those budgeted
16 amounts and I directed Mr. Beagle to reach out to Mr. Broussard
17 for his advice in developing a compliant pay plan.

18 Q. And did you do that via email or through a phone
19 call?

20 A. What? What are you referring to?

21 Q. You directed Mr. Beagle to get in touch with
22 Mr. Broussard. Is that what you just said?

23 A. Yes.

24 Q. Did you do that through an email or a phone call?
25 Because I don't have any emails from you saying that.

1 A. I did that face-to-face.

2 Q. Okay. So when you see Mr. Beagle emailing this to
3 Steve Broussard in the middle of the page on October 20, 2017,
4 he's not saying budgeted day rates. He's just saying these are
5 the intended day rates we'd like to mirror.

6 So this email was sent after you had already
7 told him it was a budgeted day rate?

8 A. This email was sent after we received the budgeted
9 amounts from Mr. Ellison to Mr. Broussard for Mr. Broussard's
10 advice on developing a compliant pay plan, which Mr. Beagle
11 makes abundantly clear in the last sentence.

12 Q. All right. Let's go to the first page. And this is
13 Mr. Broussard on October 20, 2017, emailing Mr. Beagle, CC'ing
14 Mr. Kinsey and Mr. Kalman.

15 Do you see that?

16 A. Yes.

17 Q. Okay. So a highlighted portion is basically
18 saying -- it's Mr. Broussard saying, If you pay a day rate,
19 you're going to have to pay overtime.

20 Do you agree with that?

21 A. Mr. Broussard's email speaks for itself. Generalized
22 he's saying that if you pay a day rate, then you would need to
23 calculate overtime.

24 Q. And pay it, right?

25 A. Yes.

1 Q. So what other alternative pay schemes or pay
2 processes did Mr. Broussard discuss with anyone from Mammoth or
3 Cobra?

4 MR. STUKENBERG: Objection, form.

5 A. So the evaluation of a pay plan was an iterative
6 process that took place over a period of time between
7 Broussard, Beagle, as well as conversations with me. The
8 analysis that was performed took the budgeted amounts from
9 Mr. Ellison. There was a spreadsheet that was bounced back and
10 forth between Beagle and Broussard that was discussed on a
11 couple of occasions that utilized those budgeted amounts to
12 calculate and ultimately implement an hourly plan that we can
13 see on the pay stubs.

14 Q. (BY MR. WELMAKER) Okay. And when did this iterative
15 process end?

16 A. In regards to an end date, the first payroll in
17 Puerto Rico would have been approximately early part of
18 November. So at that point, we can see, you know, hourly pay
19 stubs for skilled labor in Puerto Rico that references the
20 hourly rates as well as overtime hours and overtime rates that
21 was ultimately decided upon based on direct advice from
22 Mr. Broussard as well as discussions with the operational team.

23 Q. Okay. So, again, when did the iterative process end?

24 A. Again, the first payroll would have been run sometime
25 early November of '17.

1 Q. Okay. And so did you ever or anyone else ever take
2 any of the pay stubs that were paid out to any of the linemen
3 in Puerto Rico and then run those by Mr. Broussard?

4 A. Did I ever? I'm not sure I understand the question.

5 Q. Did anyone take any of the pay stubs issued to any of
6 the line workers in Puerto Rico and run those pay stubs by
7 Broussard and ask him to review them?

8 A. Prior to the commencement of litigation, no, not that
9 I'm aware of based on my review of documents.

10 Q. Are you aware that anybody else ran any pay stubs by
11 Mr. Broussard once payroll started in Puerto Rico?

12 A. Again, based on my review of the documents, I've not
13 seen that.

14 Q. Okay. So did you or anyone else consult
15 Mr. Broussard about what I'm gonna call a pay rate boost or
16 what you're gonna call a discretionary bonus? Did anybody run
17 that concept by Mr. Broussard?

18 A. In regards to what? I think you're speculating about
19 what my testimony may or may not be, so I'm not understanding
20 your question.

21 Q. We'll get to examples of paychecks where my clients
22 were given random bonuses to bring their pay up to exactly days
23 worked times day rate. Did anybody run those bonuses by
24 Mr. Broussard?

25 A. If you're asking whether or not Mr. Broussard was

1 contacted about discretionary bonuses, Mr. Beagle did receive
2 advice from Mr. Broussard over a period of years from likely
3 2014 through 2016, 2017, relative to discretionary bonuses paid
4 to both hourly as well as salaried employees.

5 Q. But I'm talking about the discretionary bonuses that
6 we'll see in this case. Or do you want me to just show them to
7 you and then we can kind of narrow it down? Let's do that.
8 Let's do that. So this is going to be part of 36.

9 (Exhibit 36 marked.)

10 MR. WELMAKER: Will, this is what I was talking
11 about. I tried to mark it as 36, but it marked it on the very
12 first page. So how do you want to --

13 MR. STUKENBERG: So I would think the entire
14 earning statement records for that particular individual would
15 be the exhibit, and then you can refer by Bates number to
16 whatever particular pages you would like to ask questions is
17 what makes sense to me.

18 MR. WELMAKER: Yeah. Duff has pay stubs for --
19 this is Bryan Duff. He has got 50 pay stubs. Let me -- so
20 what I've marked as Exhibit 36 is Duff pay stubs Bates-stamped
21 44 through 93.

22 MR. STUKENBERG: Okay.

23 MR. WELMAKER: And what I'm looking at right
24 here is it's going to be Exhibit 36 Bates-stamped page 93.

25 MR. STUKENBERG: And Doug, just for clarity, I

1 know there is approximately 80 exhibits that you sent over. I
2 don't know if you're going to cover all 80 today. To the
3 extent that an exhibit's not covered, what's your intention to
4 include it with the transcript?

5 MR. WELMAKER: I'm not sure if I understand.

6 MR. STUKENBERG: Sure. So you sent over
7 approximately 80 exhibits, proposed exhibits to the deposition.
8 Do you intend to have all 80 of those as exhibits to the
9 deposition or only those that you discuss?

10 MR. WELMAKER: Whatever is easier for you. I
11 mean, I don't care. Do you want to just limit it to what was
12 discussed?

13 MR. STUKENBERG: That would seem to make sense
14 to me.

15 MR. WELMAKER: Yeah, let's just do it that way.

16 MR. STUKENBERG: Okay.

17 MR. WELMAKER: Some of these are going to be a
18 little bit more difficult because there are two sets of pay
19 stubs produced and two sets of timesheets produced for some of
20 these individuals. But I guess we'll just get to that when we
21 get to it.

22 I'm just gonna do one of these right now. And
23 then during lunch, I'll try to make it so that it's easier
24 because of the problems that I'm having with the exhibit
25 labels.

1 (Exhibit 43 marked.)

2 MR. WELMAKER: This is Gerardo Garcia's pay
3 stubs. It's from Exhibit 43. Let me try to get -- the
4 starting Bates number is 117. The ending Bates number is 140.

5 MR. STUKENBERG: And, again, this is Exhibit 43?

6 MR. WELMAKER: Yeah, we're moving on to 43.

7 MR. STUKENBERG: Okay. And just so you're
8 aware, the screen still reflects 39.

9 MR. WELMAKER: Right. All right. So is that
10 better? This is going to be 43, Bates-stamped page 140.

11 MR. STUKENBERG: Yeah, I see it.

12 MR. WELMAKER: Okay.

13 Q. (BY MR. WELMAKER) So from this pay stub, Mr. Layton,
14 can you tell how many hours Mr. Garcia worked?

15 A. During this particular pay period, it looks like he
16 worked 144 hours.

17 Q. And if he's getting 16 hours a day, which he's
18 getting, right?

19 A. I would need to see the Time Detail Report.

20 Q. All right. So let's go -- this is 4/2 to 4/15. So
21 4/2 to 4/15, how many hours is it reflected that he's working
22 per day?

23 A. 16 hours per day from 4/7 to 4/15 it appears. 4/16.
24 Is it 4/15 or 16? I don't know. It's awfully small on my
25 screen.

1 MR. STUKENBERG: I believe it's 4/15.

2 Q. (BY MR. WELMAKER) Okay. So there is an extra 486
3 listed in his pay; is that correct? Do you see that?

4 A. Yes, I do.

5 Q. 4/15. And under this particular paycheck for that
6 same period of time, it's listed as a day rate of 486.

7 A. Correct.

8 Q. Do you see that?

9 A. I see it.

10 Q. Was Mr. Garcia paid on a day rate basis?

11 A. No. You can see that four -- the nine days that
12 Mr. Garcia worked, he was paid for 72 regular hours and 72
13 overtime hours, which should have been -- looking at the Time
14 Detail Report -- 32 hours in the first week of regular time and
15 40 hours of regular time in the second week.

16 Q. Okay. So he was making a thousand dollars a day, and
17 he worked nine days; is that right?

18 A. Actually, if you look at it -- so on -- if we can
19 pull back up the Time Detail Report. So for Saturday, 4/7, he
20 would have had 16 hours. And if we can flip back over to the
21 earnings statement. So he would have 47.30. He worked
22 16 hours on Saturday and 16 hours on Sunday, so that would have
23 been 32 hours times 32. That would have been \$1,513.60 for
24 those two days or \$756.80 for each one of those days, Saturday
25 and Sunday.

1 MR. WELMAKER: All right. Objection,
2 nonresponsive.

3 A. He was --

4 Q. (BY MR. WELMAKER) Why was he paid a day rate of \$486
5 in this paycheck?

6 MR. STUKENBERG: Mr. Welmaker, if you could let
7 Mr. Layton finish his answer, please. I think he was still
8 answering your last question.

9 MR. WELMAKER: Everything was completely
10 nonresponsive.

11 Q. (BY MR. WELMAKER) Why was he paid \$486 as a day rate
12 on this paycheck?

13 A. If I can complete my previous answer, please, I think
14 we can walk to the pay --

15 Q. All I want to know is why is this \$486 here.

16 A. Again, if I could, please, complete my previous
17 answer, I think I can walk through the pay for each day in this
18 two-week pay period and answer the question in relation to the
19 discretionary bonus that was paid under the day rate code.

20 Q. All right. Well, is it a discretionary bonus?

21 A. Again, I'd like to revert and complete my previous
22 answer.

23 Q. All right. Well, you can do that when Mr. Stukenberg
24 takes you on redirect.

25 A. If you're not gonna allow me to complete my answers,

1 then I'm not sure how we can complete this. I'd like to
2 complete my previous answer, please.

3 Q. I know how we can complete it. It's just by you
4 answering my questions, and then we can move on.

5 A. And I'm trying. And one of your deposition rules was
6 that we not interrupt each other, yet this is the second time
7 you've gone down that path and cut off my answer. So if you
8 can please --

9 Q. Yeah, because I'm not going to sit here and let you
10 give a speech and burn all my time.

11 Do you know why, yes or no, the \$486 is added to
12 this individual's pay under the day rate code?

13 A. I respectfully ask for the ability to complete my
14 previous answer.

15 Q. It's a yes or no question.

16 A. You've interrupted me multiple times, and I'm trying
17 to answer your question. And I'd ask that you respectfully
18 allow me to complete my answer to your previous question that
19 you interrupted my answer on.

20 Q. Do you know why Mr. Garcia was given a \$486 bonus on
21 this paycheck, yes or no?

22 A. Again, I'd like to complete the answer to the
23 previous question that I've been interrupted and not allowed to
24 answer.

25 Q. So you're not going to answer my question?

1 MR. STUKENBERG: That's not what he said.

2 MR. WELMAKER: It's a yes or no question.

3 That's it. It's yes or no.

4 Q. (BY MR. WELMAKER) Do you know why the 486 is on here
5 or do you not?

6 A. If you would allow me to answer the previous
7 question, I may be able to address the question that you're
8 currently asking. But as of now, you've interrupted me
9 multiple times and not allowed me to complete my answer.

10 Q. You can complete your answer when Mr. Stukenberg
11 takes you. I'm just asking for a simple yes or no question.

12 A. And I'm asking, as the witness, to be able to
13 complete the answer to the previous question that you've
14 interrupted me several times on.

15 Q. We're gonna go through a bunch of these, and we're
16 not gonna have time for you to give me a speech on every single
17 one of these.

18 A. If I need to add context as the witness and answer
19 the question as I see fit, then that's my right as the witness
20 to answer uninterrupted with the context that I feel is
21 necessary.

22 Q. No. You can answer my questions or we can just move
23 on. You're not gonna sit here and give me a speech on every
24 single one of these. I don't need the Mark Layton extended
25 version on this. It's just a yes or no question.

1 A. Sir, if you'd allow me to finish the previous
2 question, I'd certainly appreciate that ability to try to help
3 you and answer the previous question that was left unanswered.

4 Q. Go ahead and do it then. Go ahead.

5 A. I was trying to speak, and you interrupted me again.
6 Like, this is nonproductive for you to keep interrupting me.

7 Q. What's nonproductive is your speeches. That's
8 nonproductive.

9 A. That's argumentative. And I've tried to answer your
10 question.

11 Q. You're not the attorney. You're not asserting
12 objections.

13 MR. STUKENBERG: He's just trying to answer your
14 questions, Doug.

15 MR. WELMAKER: He's trying to give me a speech,
16 Will. This is the one hundredth deposition that he's taken.
17 He knows the answer.

18 Q. (BY MR. WELMAKER) But go ahead. Go ahead,
19 Mr. Layton.

20 A. Can we flip back to the Time Detail Report again?
21 I've forgotten the days now that you've interrupted me so many
22 times.

23 Q. Do you have these documents in front of you as well?
24 Did I email them?

25 A. Yes. I was trying to look at it on screen. But if

1 you'll give me the exhibit, I'll pull them up.

2 Q. I'll pull it up. Can you see it?

3 A. All I see is the earnings statement. So on 4/7, we
4 can flip back to the earnings statement. 4/7 was a Saturday.
5 Regular rate of 47.30 for 16 hours. Mr. Garcia would have
6 earned \$756.80. Sunday, 4/8, would have been another 16
7 regular hours, so Mr. Garcia would have earned \$756.80.

8 4/9 would have begun a new work week, so
9 16 hours at the regular rate of 47.30. 4/9 and 4/10 would have
10 each been at the regular rate, and Mr. Garcia would have earned
11 \$756.80 for each day. 4/11 would have been split eight hours
12 at regular rate of 47.30 and eight hours at the overtime rate
13 of 70.95. So regular earnings, I think, he would have earned
14 378.40. Overtime earnings on 4/11, he would have earned
15 567.60.

16 Days 4/12, 4/13, 4/15, 4/16 would have each been
17 at overtime. So 16 times 70.95, Mr. Garcia would have earned
18 \$1,135.20 for each one of those four days. So that gets
19 regular earnings for that period -- let's see -- \$3,405.60.
20 And overtime earnings of \$5,108.40.

21 In addition, Mr. Garcia was credited with a
22 discretionary bonus. Appears to be 486, but the number's
23 relatively small.

24 Q. My question is: Why was he given a bonus of \$486?

25 A. That was a discretionary bonus paid to Mr. Garcia.

1 Process-wise at the time, the superintendents had the ability
2 to -- and as well as the presidents of the respective
3 entities -- had the ability to pass through discretionary
4 bonuses to the linemen.

5 Again, Mr. Beagle had received previous advice
6 in 14 through 17 in regards to discretionary bonuses, and these
7 relatively small amounts were paid from time to time to workers
8 in Puerto Rico based on criteria set by the superintendents and
9 presidents, which would include good attitude, you know,
10 working safely, showing up on time, things of that nature.

11 Q. Okay. So I didn't need all the additions and
12 subtractions and multiplications for you to answer my question.
13 All I wanted to know was why was the 486 provided. And your
14 response was, It's a discretionary bonus. We could have cut
15 out all of that.

16 So first of all, why was that discretionary
17 bonus given?

18 A. Again, the superintendents and presidents had the
19 ability to pay these discretionary bonuses, and they were
20 generally based on the criteria that I mentioned: attitude,
21 safety, showing up on time.

22 Q. Does this particular bonus have anything to do with
23 the fact that Mr. Garcia was supposed to make a thousand
24 dollars a day and he worked nine days? Did it have anything to
25 do with bringing his pay up to exactly nine days times a

1 thousand dollars?

2 A. So if you work through the math, Mr. Garcia earned
3 \$756.80 for four days. And I think he earned \$946 for one day.
4 And then on the overtime days, he earned \$1,135.20 for each one
5 of those days. In addition, Mr. Garcia was given a
6 discretionary bonus of 486.

7 Q. Did the 486 have anything to do with bringing his pay
8 up to his promised day rate of \$1,000 times the days that he
9 worked?

10 A. So Mr. Garcia wasn't promised anything. Mr. Garcia
11 was an hourly employee, which is reflected on his pay stub, and
12 he was compensated for the hours he worked or available -- was
13 available to work for the nine days in the pay period. In
14 addition to that amount, Mr. Garcia was granted a discretionary
15 bonus.

16 Q. Did the discretionary bonus have anything to do with
17 Mr. Garcia not getting the full promised day rate of a thousand
18 dollars a day for the nine days that he worked, yes or no?

19 A. Again, Mr. Garcia wasn't promised anything.
20 Mr. Garcia was not under an employment contract. Mr. Garcia
21 was an hourly employee.

22 Now, if Mr. Garcia worked or was available to
23 work for a full work week, you can average his amount on a per
24 day basis and get a daily average of what he would earn for a
25 full period. That would be relatively close but not exact to

1 the daily budgeted amounts.

2 As is the function with all hourly employees,
3 you have to look at the days worked throughout the period and
4 where they're at in regular versus overtime hours to calculate
5 what their earnings were during that particular work week.

6 (Exhibit 75 marked.)

7 Q. (BY MR. WELMAKER) All right. I'm showing you what's
8 been marked as Exhibit 76 [sic.] Do you see it?

9 A. Yes. It's very small on my screen.

10 Q. Okay. This is for Mr. Garcia. And it says his
11 Puerto Rico storm rate is a thousand dollars per day.

12 Do you see that?

13 A. I believe the document states a thousand dollars per
14 day that will be broken down hourly over 16 hours daily.
15 Hourly, 47.30.

16 Q. Okay. So regardless of how it's broken down, he's
17 being told he will get a thousand dollars per day.

18 Do you agree with that?

19 A. No.

20 Q. Okay. All right. Let me ask you this: So you don't
21 agree that he's being told he's going to make a thousand
22 dollars a day, right? You disagree with that statement, yes or
23 no?

24 A. Mr. Garcia is an hourly employee. So he has to work
25 for the hours or be available to work, and then he's

1 compensated accordingly.

2 Q. Okay. So should the thousand dollars per day even be
3 in there?

4 A. I'm not sure the thousand dollars per day means
5 anything one way or another. This is not a binding contract.

6 Q. I'm not asking if it's a contract. Is it what he was
7 told that he was going to be paid?

8 A. In what he was told he was being paid as an at-will
9 employee is insignificant. What matters is how he was actually
10 paid. And he was paid as an hourly employee. And you can see
11 the regular and overtime hours. You can see the overtime rate
12 is one and a half times the regular rate. And so the mechanics
13 are reflected on the earnings statement that Mr. Garcia
14 received.

15 Q. Okay. So does anything on this offer letter mean
16 anything to you?

17 A. In regards to the offer letter, no, it's relatively
18 insignificant based on the advice of Mr. Broussard and --

19 Q. Okay.

20 A. -- the fact that Mr. Garcia is an at-will employee.

21 Q. All right. So if Mr. Garcia is getting -- so in your
22 opinion, we ignore the thousand dollars per day. What you're
23 focused on is the 47.30 hourly rate; is that correct?

24 A. What I'm focused on is the mechanics of the earning
25 statements which reflect the pay plan that was implemented.

1 Q. Okay. So if Mr. Garcia is going to be paid \$47.30
2 per hour and he works 16 hours a day but he only works one day
3 in a two-week time period, how much is he gonna make?

4 A. For one day, he makes \$756.80.

5 Q. Okay. So he wouldn't be making the thousand dollars
6 per day that's reflected in this document, would he?

7 A. Again, that's the nature of an hourly employee.

8 Q. Okay. And did anybody from Mammoth or Cobra ever
9 address the fact that when someone works less than a full
10 two-week period that their rates need to be adjusted? Did that
11 ever come up?

12 A. There was certainly an identification that if an
13 employee worked a short week, which was relatively infrequent
14 in nature, that there could be an instance in which you may
15 have an employee due to the short week earn less than an
16 average amount that's represented here --

17 Q. Okay. Earn less than the average 1,000 per day?

18 MR. STUKENBERG: If -- Mr. Welmaker, if you can
19 let him finish his answer, please.

20 A. Yes. So on average, if the employee worked a short
21 week or didn't work the targeted hours, then they would earn
22 less than an average. And that's the case with every hourly
23 employee. If you come up with a budget of, you know, \$52,000
24 per year for an hourly employee and they work less than that,
25 then they're certainly going to earn less than a thousand

1 dollars per week. Likewise, if they work more than that, then
2 they would earn more. That's the nature of hourly employees.
3 You can give them target amounts based on estimates, you know,
4 that they may be able to earn. But as an hourly employee, it's
5 a function of hours worked or available to work in the work
6 week.

7 Q. (BY MR. WELMAKER) And so going back to Exhibit 43,
8 140, is the 486 that we see under the day rate column, is that
9 a discretionary bonus that was given to Mr. Garcia to get him
10 up to his average rate?

11 A. Discretionary bonus paid to Mr. Garcia for safety,
12 attitude, showing up on time, at the discretion of the
13 superintendent or president at 5 Star.

14 Q. Did it have anything to do with bringing his pay up
15 to the average targeted rate?

16 A. It recognized that if an employee worked a short week
17 that the supervisors I've referenced had the ability to bonus
18 individuals reflective of that increased margin that the
19 company realized as a result of the short week.

20 So, again, as with all discretionary bonuses,
21 sometimes they were paid and sometimes they were not. And we
22 can see that borne out in the check stubs of Mr. Garcia as well
23 as other employees.

24 Q. Okay. So if Mr. Garcia's offer letter says a
25 thousand dollars per day and his Time Detail Reports show that

1 he worked nine days, does this 486 day rate bonus have anything
2 to do with bringing up his pay to the thousand dollars a day
3 multiplied by nine days worked?

4 MR. STUKENBERG: Objection, form.

5 A. Again, the 486 was a discretionary bonus that was
6 paid to Mr. Garcia. We can walk through the mechanics and what
7 Mr. Garcia earned for each of the nine days in this pay period.
8 And those amounts along with the discretionary bonus of \$486
9 comprise the gross amount.

10 Q. (BY MR. WELMAKER) Okay. So the 486 in this specific
11 example could have been just because he's got a good attitude,
12 right?

13 A. That was one of the factors that --

14 Q. It could have -- go ahead. I'm sorry.

15 A. That was one of the factors that the superintendents
16 as well as the president had as criteria. Good attitude, show
17 up on time, working safely.

18 Q. And so this \$486 bonus could have had nothing to do
19 with his pay shortfall that we see here?

20 MR. STUKENBERG: Objection, form.

21 A. Well, there is no shortfall. Mr. Garcia was paid for
22 each of the hours he worked and was paid for overtime for each
23 hour in excess of 40 hours in each work week.

24 Q. (BY MR. WELMAKER) Okay. So let me see if I
25 understand this. So the \$486 that was bonused here, that was a

1 discretionary bonus, correct?

2 A. Yes.

3 Q. It wasn't done to make him whole, correct?

4 A. That's correct.

5 Q. Okay. And it had nothing to do with the fact that
6 he -- his offer letter says a thousand dollars a day and he
7 worked nine days?

8 MR. STUKENBERG: Objection, form.

9 That's not what the letter says.

10 MR. WELMAKER: Will, it's objection, form.

11 That's it.

12 Q. (BY MR. WELMAKER) It had nothing to do with the fact
13 that he -- his offer letter says a thousand dollars a day and
14 he worked nine days. It had nothing to do with that, right?

15 MR. STUKENBERG: Same objection.

16 A. Is there a question pending?

17 Q. (BY MR. WELMAKER) Yeah. It had nothing to do -- the
18 486 bonus had nothing to do with the fact that his offer letter
19 said a thousand dollars a day. He worked nine days, and that
20 brought him to less than \$9,000. It had nothing to do with
21 bringing his pay up to \$9,000, correct?

22 MR. STUKENBERG: Objection, form.

23 A. His offer letter referenced his hourly rate, which we
24 can see. Regular rate of 47.30. We can see that Mr. Garcia
25 was paid for the regular hours --

1 Q. (BY MR. WELMAKER) Just answer my question. Did it,
2 yes or no, have anything to do with the shortfall?

3 A. Again, if you could, please, restrain yourself and
4 allow me to answer the questions and stop interrupting me.

5 Q. I'm gonna ask you -- I'm asking you yes or no
6 questions. And if you don't want to answer yes or no
7 questions, we'll shut the deposition down. We'll talk to the
8 judge, and we'll get this over with a lot quicker. I don't
9 need your calculations. Just yes or no. If I want
10 calculations, I'll ask for them.

11 MR. STUKENBERG: And Doug, sometimes answers
12 need context.

13 MR. WELMAKER: I've been given 20 minutes of
14 context in this situation. I don't need the context again.

15 MR. STUKENBERG: Well, not all questions are yes
16 or no answers.

17 MR. WELMAKER: If they're not, then you can fix
18 it on redirect.

19 MR. STUKENBERG: If you don't like his answer,
20 you don't like his answer, but his answer is his answer.

21 MR. WELMAKER: His answer is gonna have us in a
22 seven-day deposition. We're not going through the mathematics
23 of every single paycheck that I'm gonna show him. I'm not
24 doing it. The judge wouldn't let us do it at trial. There is
25 no way the judge is gonna let us do that.

1 Q. (BY MR. WELMAKER) Mr. Layton, I'm gonna ask you
2 again: Did the \$486 bonus have anything to do with the fact
3 that his promised day rate in the hour [verbatim] letter
4 multiplied by days worked should have put him at \$9,000, but it
5 didn't?

6 MR. STUKENBERG: Objection, form.

7 A. Again, there's no promise of anything in the offer
8 letter. The offer letter references a number of things,
9 including his hourly rate of \$47.30, which we can see directly
10 on this earnings statement. And we can see that Mr. Garcia was
11 paid for regular hours at his regular rate up to 40 hours in
12 each work week and paid for overtime hours in excess of
13 40 hours in each work week at 1.5 times \$47.30.

14 Q. (BY MR. WELMAKER) So is it your -- is it your
15 opinion that the 486 was just a random good faith, hey, you're
16 doing a good job bonus?

17 A. The \$486 was a discretionary bonus at the criteria
18 and discretion of the superintendents as well as the president
19 that they passed to Mr. Garcia at their sole discretion.
20 Sometimes this was done and sometimes it was not at their
21 discretion.

22 Q. Was that bonus ever given to employees to bring their
23 pay up to the targeted pay rate times day work -- days worked?

24 A. There were discretionary amounts paid in various
25 increments, if you will, so I can't answer an ever question

1 like that.

2 Q. Okay. So if we look at this -- and we're still on
3 43, 140 -- if you assume that he is supposed to be paid \$9,000
4 a day [sic] and he works nine days, using the hourly method,
5 he's not getting to a thousand dollars a day. But he just
6 happens to be given \$486 that brings him to exactly a thousand
7 dollars a day. Is that a coincidence in your opinion?

8 MR. STUKENBERG: Objection, form.

9 A. I believe you said he was being paid \$9,000 a day.
10 So kind of lost me.

11 Q. (BY MR. WELMAKER) Let me clarify myself. If he's
12 being paid a thousand dollars a day and he works nine days,
13 under the hourly method, he's not going to get \$9,000. But
14 with this \$486 bonus, it gets him to exactly \$9,000. Is that a
15 coincidence?

16 MR. STUKENBERG: Objection, form.

17 Q. (BY MR. WELMAKER) Is that bonus just randomly
18 calculated as a coincidence, or was it meant to bring him up to
19 exactly \$9,000?

20 MR. STUKENBERG: Same objection.

21 A. The bonus was based on the discretion of the
22 managers. Mr. Garcia was paid on an hourly and overtime basis,
23 as I detailed out earlier. And then in addition to the hourly
24 and overtime hours, he was granted a discretionary bonus.

25 Q. (BY MR. WELMAKER) And it just so happens that the

1 discretionary bonus gets him to \$1,000 a day times the nine
2 days he works, right? That's just a coincidence?

3 A. Again, there were four days on which he earned
4 \$756.80. I think an additional day that he earned \$946 and
5 another four days where he earned \$1,135.20 depending on where
6 he was at in the work week and whether he was at regular or
7 overtime earnings.

8 Q. Let's go to Bates 134, Exhibit 43. Here,
9 Mr. Garcia's day rate is now \$135.

10 Do you see that?

11 A. Yes.

12 Q. Okay. So I guess if he's getting bonused on doing
13 good work or being a good employee, he's not that good of an
14 employee, right? I mean \$135 bonus, that's -- that's not gonna
15 make any difference to anybody really, is it?

16 Let me ask you this: Have you ever looked at an
17 employee's performance and said, That employee is doing so
18 good, I think I'll give them \$135 bonus?

19 Have you ever done that?

20 A. I've approved several bonuses throughout my career.

21 Q. Have any of them ever been \$135 over a two-week pay
22 period?

23 A. I don't recall the amounts from smallest to greatest
24 amount. They've been all over the place. That's the nature of
25 discretionary bonuses.

1 Q. Have you ever given \$135 bonus?

2 A. That exact amount, no. I've given certainly small
3 bonuses of 50, 75, hundred dollars. They vary all over the
4 place.

5 Q. Let's go to Bates 133 for Mr. Garcia.

6 MR. STUKENBERG: And Doug, as we flip to that
7 page, what are you thinking for lunch here? I'm not in any
8 particular rush. Just want to know your plan.

9 MR. WELMAKER: Do you want to say 45 minutes, or
10 is that too long, too short?

11 MR. STUKENBERG: I mean, Mr. Layton, is that
12 enough time for you to get something?

13 THE WITNESS: 45 minutes works for me.

14 MR. WELMAKER: Let's do 45 minutes. Let me
15 finish this one and --

16 MR. STUKENBERG: No, no. Take your time. It's
17 getting to be about that time, so just wanted to know what your
18 plan was.

19 MR. WELMAKER: Yeah, I get it.

20 Q. (BY MR. WELMAKER) So on this document, which is
21 Bates-stamped 133, Mr. Garcia is given a random bonus of
22 \$405.20.

23 And just out of curiosity, Mr. Layton, do you
24 ever give bonuses with extra cents added on?

25 A. Discretionary bonuses can be all over the place.

1 That's their nature of discretionary bonus --

2 Q. Sure. But I'm asking you.

3 A. And I'm asking again, if you would, please, stop
4 talking over me. Like, it interrupts my thought process and
5 ability to answer your questions clearly and concisely.

6 Q. I apologize. Are you done?

7 A. Yes.

8 Q. Have you ever given a bonus of X dollars and 23 cents
9 or 20 cents?

10 A. Yes. Discretionary bonuses are all over the place.
11 They can be in random amounts. That's the nature of
12 discretionary bonuses.

13 Q. And so you've given a bonus with, like, an extra 20
14 cents on it, right?

15 A. The nature of discretionary bonuses, they can be all
16 over the place.

17 Q. I'm asking about you.

18 A. The nature of discretionary bonuses is that they can
19 be all over the place --

20 Q. I'm asking about you.

21 A. -- in terms of -- again, this is about the tenth time
22 you've been rude and interrupted me. It's problematic for me
23 to be able to clearly and concisely answer your questions when
24 you routinely are talking over me and interrupting my thought
25 process.

1 Q. Do you know what you're routinely doing? You're
2 routinely not answering my questions. If you would just listen
3 to the question, we could get out of here much quicker.

4 MR. STUKENBERG: And I think he's trying to
5 answer your question, Doug.

6 Q. (BY MR. WELMAKER) Let me clarify it.

7 Yes or no, have you ever given a bonus with
8 extra cents on it like a 405.20? Yes or no?

9 A. Are you asking me as a supervisor or me in my
10 corporate rep capacity for these entities?

11 Q. At any point in your life.

12 A. Clearly as a corporate rep, there are bonuses that we
13 can see that have odd dollars and cents in these pay records.
14 In my 25-year career, I've paid discretionary bonuses all over
15 the place that include odd number cents. I've paid thousands
16 of them.

17 Q. That's all I wanted to know. So this period of time
18 is from July 9th to July 22nd.

19 Do you see that?

20 A. Yes.

21 Q. I'm showing you Mr. Garcia's Time Detail Report for
22 the first part of the week. 7/9, 7/10, 7/11, 7/12. It doesn't
23 appear that he worked, correct?

24 A. Correct.

25 Q. Doesn't appear that he worked on 7/13, 7/14 or 7/15,

1 correct?

2 A. Yes.

3 Q. How many days did Mr. Garcia work in the second pay
4 period from 7/16 to 7/22?

5 A. I'm not sure I understand your question or context of
6 a second pay period.

7 Q. I'm sorry. The second week of the two-week pay
8 period from 7/16 to 7/22, how many days did he work?

9 A. Appears to have been four days.

10 Q. Okay. His offer letter says he's making a thousand
11 dollars a day.

12 MR. STUKENBERG: Objection, form.

13 Q. (BY MR. WELMAKER) So if he worked \$1,000 a day times
14 four days, he would theoretically be entitled to \$4,000. And
15 he just happens to get a discretionary bonus of \$405.20 that
16 magically brings his pay up to \$4,000.

17 My question to you is: Was this related to the
18 amount of time that he worked, or was this just a performance
19 for doing a good job?

20 MR. STUKENBERG: Objection, form.

21 A. The amount of time that he worked was 64 hours for
22 which he was compensated 40 regular hours at \$47.30, and you
23 get regular earnings of \$1,892. In addition, he was
24 compensated for 24 hours of overtime at \$70.95 for overtime
25 earnings of \$1,702.80. In addition, Mr. Garcia was credited

1 with a discretionary bonus of \$405.20 based on the criteria
2 that I mentioned earlier.

3 Q. (BY MR. WELMAKER) Did that criteria have anything to
4 do with bringing his pay up to the targeted rate of a thousand
5 dollars a day?

6 A. The criteria are the criteria. The amount paid does
7 recognize that if Mr. Garcia had worked a full work week, his
8 daily average would have been higher. But the reality of the
9 situation is, is that because Mr. Garcia worked a short work
10 week, Cobra Acquisitions realized higher margins on those days,
11 so elected to pass through on a discretionary basis some of
12 those margins to Mr. Garcia as compared to budgeted labor
13 amounts. So one could take that that, you know, no good deed
14 goes unpunished for passing through a discretionary bonus to an
15 employee.

16 MR. WELMAKER: I'll object to your
17 editorializing. Thank you for your answer. If you'd answer
18 like that, we can get out of here a lot quicker. And
19 Mr. Layton, I apologize for getting frustrated. I'm going to
20 try to do better.

21 Let's just take 45 minutes for lunch.

22 (Break from 12:28 p.m. to 1:25 p.m.)

23 Q. (BY MR. WELMAKER) Okay. Mr. Layton, I want to go
24 back to what we had as Exhibit 6. It was 2373 through 2375.

25 Can you see that okay?

1 A. It's pretty small on my screen.

2 Q. Okay. Hang on a second. Is that better?

3 A. Yes.

4 Q. All right. If there's anything that you can't see
5 because it's too small or blurry, just let me know, and I'll --
6 I'll make it so that you can see it.

7 So let me just go up, if I can. This is
8 Broussard's response to Jeff Beagle. So we are on Exhibit 6.
9 Broussard responds on October 20, 2017. And we've covered some
10 of this. He is saying that if Mammoth chooses to pay a day
11 rate under the FLSA, then Mammoth would have to pay overtime on
12 hours worked over 40. And that's highlighted at the bottom.

13 Do you see that?

14 MR. STUKENBERG: Objection, form.

15 A. The email states what it states. Broussard doesn't
16 reference Mammoth anywhere in that response that I can see.

17 Q. (BY MR. WELMAKER) I'm sorry. Let me clarify that.
18 Broussard is responding to Jeff Beagle, who appears to be the
19 HR director for some Mammoth entity.

20 And is it your prior testimony that he was the
21 HR director for Mammoth Energy, Inc.?

22 A. Yes.

23 Q. Okay. He's also responding to Ken Kinsey. And Ken
24 Kinsey was with Cobra; is that correct?

25 A. Either Cobra Energy or Cobra Acquisitions. I don't

1 remember which was his employer.

2 Q. Okay. And then Alexander Kalman, was Mr. Kalman with
3 Mammoth Energy, Inc.?

4 A. Yes.

5 Q. Okay. So he's responding and discussing in the
6 highlighted portion how overtime would be calculated if Mammoth
7 chose to pay on a day rate.

8 Do you see that?

9 A. Again, there's no reference to Mammoth anywhere in
10 this email.

11 Q. I'm sorry. I keep -- I'm just defaulting back to the
12 defendant -- well, that's not even correct.

13 He's responding to Beagle, Kinsey and Kalman
14 saying that if the pay system chosen was a day rate, that
15 overtime would have to be paid on that.

16 MR. STUKENBERG: Objection, form.

17 MR. WELMAKER: What's the objection, Will? Let
18 me try to clarify it.

19 MR. STUKENBERG: Well, you're paraphrasing what
20 the email says, and so my objection is gonna be form, but it's
21 just the email reads what it says.

22 MR. WELMAKER: Okay.

23 MR. STUKENBERG: I'm trying not to give a
24 speaking objection.

25 So to the extent that helps, I'll object as long

1 as you're paraphrasing what the email says.

2 MR. WELMAKER: Okay. All right.

3 Q. (BY MR. WELMAKER) So I am going to say that I'm
4 paraphrasing what the email says. And he's -- Mr. Broussard is
5 talking about how overtime would be paid if a day rate program
6 was utilized. And I've tried to highlight that.

7 Do you see that highlighted portion?

8 A. Yes.

9 Q. Okay. So what alternative pay schemes or pay methods
10 did Mr. Broussard review? What was he presented with?

11 A. So there were a number of conversations with
12 Broussard. You see the response here to Beagle's initial
13 inquiry. I believe there was a Sunday afternoon phone call a
14 couple of days after this email on which I participated that we
15 had -- we being Beagle, Broussard, myself -- had a dialogue
16 about pay plan structure, using budgeted amounts to derive
17 hourly rates, the applicability of Puerto Rico law, some
18 workers' comp aspects, a number of things. But as it centered
19 around pay practices, there was a call on Sunday. I think
20 Beagle had a couple of calls on the following week culminating
21 in an Excel file that Mr. Broussard advised us was compliant
22 with the FLSA.

23 MR. WELMAKER: Objection, nonresponsive.

24 Q. (BY MR. WELMAKER) Did he give you two options, you
25 could pay hourly with overtime or day rate with overtime?

1 A. There were two options analyzed; a day rate being one
2 of them, and then the second option was an hourly and overtime
3 plan. What was ultimately implemented was an hourly and
4 overtime plan that we can see on the earnings statements.

5 Q. Okay. And we've been over some of the day rate
6 adjustments in paychecks prior to breaking for lunch.

7 Did Mr. Broussard ever review those
8 discretionary bonuses that we looked at prior to lunch?

9 A. So you call those payments one thing. We refer to
10 them as something different. So recognizing that we have a
11 difference of opinion on what those are or aren't,
12 Mr. Broussard had advised over a period of previous years that
13 I referenced earlier, 2014 through 2017, in regards to
14 discretionary bonus payments upon which we relied.

15 Q. Okay. When he was talking in the past about
16 discretionary bonus payments, what was he saying about them?

17 A. So the advice we received in regards to discretionary
18 bonus payments as it relates to hourly and salaried employees
19 generally centered on that, you know, A, they're not
20 guaranteed. You know, they need to be relatively infrequent in
21 both occurrence and in amount.

22 I think one key point is that, you know, there
23 was no advice given at any point on key words or catch words
24 that we couldn't utilize to make discretionary bonus payments
25 nor were we given any advice on thresholds as it relates to,

1 you know, how often they could be paid or should be paid in
2 compliance with standards as it relates to the discretionary
3 nature. In other words, there's no mathematical barrier on
4 which to measure a discretionary bonus as to whether or not
5 it's discretionary.

6 Q. Okay. And was he talking about discretionary bonuses
7 in terms of including them in the regular rate or not?

8 A. I'm not sure I understand your question.

9 Q. Was the topic of discretionary bonuses brought up in
10 the context of whether such discretionary bonuses would be
11 included in the regular rate for purposes of calculating
12 overtime? Is that why you guys were talking about it?

13 A. I don't understand the connection between the two, so
14 I'm not following your question.

15 Q. Let me do it a different way. I'm showing you again
16 Fed 133, which is part of Exhibit 43. Did you ever show
17 Mr. Broussard a paycheck with a bonus such as that contained in
18 this document, and in this particular one it's for 405.20?

19 A. What's the question?

20 Q. Did you ever show him -- well, let me ask you this:
21 Did you ever show him any pay stubs from the time that payroll
22 started in Puerto Rico?

23 A. Ever is a long time. I'm sure that once the
24 litigation commenced --

25 Q. All right.

1 A. -- he probably saw them, and that would be
2 privileged. So prior to that --

3 Q. All right. So let me clarify. From October 2017 to
4 July 22, 2018, did you ever show Mr. Broussard any pay stubs
5 from any of the workers in Puerto Rico and ask him to review
6 them?

7 A. Not specifically that I've seen.

8 Q. That you know of. Do you know of anybody doing that?

9 A. Again, not specifically that I've seen.

10 Q. Did Mr. Broussard know that you were giving these
11 discretionary bonuses to workers in Puerto Rico during the time
12 period of late October 2017 to July 22 of 2018?

13 A. Not that I'm aware of. Again, we had received
14 previous advice from Broussard on discretionary bonuses and
15 relied on that prior advice in regards to discretionary bonuses
16 when these discretionary bonuses were paid.

17 MR. WELMAKER: Objection to everything after the
18 word "again."

19 (Exhibit 7 marked.)

20 Q. (BY MR. WELMAKER) I'm showing you what's been marked
21 as Exhibit 7. And I'm interested in the highlighted part.
22 It's from Missy Davis to a potential applicant dated
23 October 23rd, 2017.

24 Can you see that?

25 A. It's very small on my screen.

1 Q. Is that better?

2 A. Yes.

3 Q. Okay. Missy says the following: Below is the pay
4 scale for Puerto Rico. We will be working no more than 12 days
5 because that's all they will allow. Your daily pay is the same
6 no matter what the hours are.

7 Do you agree that the workers that were going
8 over to Puerto Rico were gonna have a daily pay that was going
9 to be the same no matter what the hours were?

10 A. No, I don't agree with that. And further, I can't
11 see who this email is from. But I don't believe this email
12 based on the quick snippet I saw is from any of your claimants.

13 Q. All right. I'm going to let you review the entire
14 email. And I'll represent to you that it's from Missy Davis.

15 Do you know who Missy Davis is?

16 A. Missy Davis was an HR representative for 5 Star. I
17 don't recall what her exact title was.

18 Q. Okay. Do you want to take a second and read it?

19 A. The document states what it states. I think for
20 context, this document is not indicative of pay records. And
21 this email would have been sent before anyone was hired. So
22 just to frame the email, I don't know that it has a lot of
23 value.

24 Q. Okay. Is Missy Davis advertising the pay rates for
25 potential employees to go to Puerto Rico and work for 5 Star?

1 A. The email states what it states. I think if you look
2 at the earnings statements, you can see that the employees were
3 paid hourly and overtime. I've not seen in my review of
4 thousands of pay records that any employees were paid with an
5 email or deposited an email in their checking account.

6 Q. Is --

7 MR. WELMAKER: Objection, nonresponsive.

8 Q. (BY MR. WELMAKER) Is Missy Davis advertising that
9 5 Star is going to be paying foremen \$12,500 -- \$1,250 per day,
10 journeymen/linemen 1,000 per day, A class, 900 a day, B class
11 800 a day, hot apprentice 700 a day and apprentice groundsman
12 600 a day? Is that what she's advertising?

13 A. The email states what it states. This is before any
14 pay plan had been finalized, before anybody had been hired and
15 is not indicative of the pay plan that was implemented and
16 reflected on the earnings statements.

17 MR. WELMAKER: Objection, nonresponsive.

18 Q. (BY MR. WELMAKER) I'm asking you what Missy Davis is
19 doing here. Is she relaying the very same rates that
20 Mr. Ellison relayed to everybody in his original email, yes or
21 no?

22 A. Mr. Ellison relayed budgeted amounts that were
23 conveyed to Mr. Broussard. Those budgeted amounts were used to
24 derive hourly rates in a compliant pay practice that was
25 implemented, and we can see from the Excel sheet that

1 Mr. Broussard approved the mechanics of the implementation of
2 those mechanics on the earnings statements received by skilled
3 workers in Puerto Rico.

4 Q. Okay.

5 MR. WELMAKER: Objection, nonresponsive to
6 everything you just said.

7 Q. (BY MR. WELMAKER) I had a yes or no question for
8 you, Mr. Layton. Is Missy Davis communicating the very same
9 pay rates that Mr. Ellison communicated to everyone else that
10 we just looked at? Is she communicating that to other people
11 in this email?

12 A. I believe her email is what -- with one particular
13 person. She is conveying amounts that agree to the budgeted
14 amounts that Mr. Ellison had set forth that were utilized to
15 derive the pay practice and pay plan approved by Mr. Broussard.

16 Again, this email is not a contract. It's not
17 binding. At this point in time, contextually, no pay plan has
18 been implemented and discussions are ongoing with
19 Mr. Broussard.

20 Q. All right.

21 MR. WELMAKER: I'm gonna object to that as
22 nonresponsive too.

23 Q. (BY MR. WELMAKER) Let me show you -- let me try to
24 do it like this: We're looking at some rates here that Missy
25 Davis is communicating to a third party. Do you agree with

1 that?

2 A. The email states what it states. I'm not on this
3 email --

4 Q. I'm not asking you to tell me if it states what it
5 states. Do you see the numbers that she's communicating on a
6 day rate basis here?

7 A. Here's the deal, if you keep interrupting me, I'm
8 gonna end this.

9 Q. Okay. Do it. Go ahead and end it, Mr. Layton. And
10 then we'll reconvene when the judge tells us that we'll
11 reconvene.

12 A. I'm following your rules of not interrupting,
13 Mr. Welmaker. So, please, allow me to finish my answers.

14 Q. In this email, Missy Davis is saying foremen, 1250
15 per day. That's in Exhibit 7. Let's go back and look at what
16 Mr. Ellison is saying. Foremen, 1250 per day.

17 Are those the same numbers?

18 A. The emails speak for themselves.

19 Q. Are they the same numbers?

20 A. Again, the emails speak for themselves. Those two
21 numbers are the same.

22 Q. She's saying -- Ellison is saying journeymen/linemen
23 a thousand dollars per day. Missy Davis, journeymen/linemen a
24 thousand dollars per day.

25 Do you see that?

1 A. I can't see Mr. Ellison's email that -- they state
2 what they state.

3 Q. Would you agree that Missy Davis is using the same
4 numbers and terminology that Mr. Ellison is using?

5 A. Again, the emails state what they state.

6 Q. So you're not gonna answer my question?

7 MR. WELMAKER: Will, I'm not here to ask
8 Mr. Layton to tell me that the emails state what they state.
9 That's not an answer.

10 MR. STUKENBERG: I think it is an answer. I
11 mean, you're just reading emails.

12 MR. WELMAKER: I'm asking if they're the same.
13 I'm asking if Missy Davis' email is the same as Mr. Ellison's
14 email.

15 MR. STUKENBERG: Do you want to show him
16 Mr. Ellison's email?

17 MR. WELMAKER: I just did.

18 MR. STUKENBERG: And just so I understand, is
19 the question: Do both emails use 1,250, that number is in both
20 emails? Is that the question?

21 MR. WELMAKER: The question is: Is Missy Davis
22 tracking the same payment language that's in Mr. Ellison's
23 email? That's all I'm asking.

24 Q. (BY MR. WELMAKER) This is Mr. Ellison's email.

25 A. I can't see Mr. Ellison's email. So when you keep

1 saying, This is Mr. Ellison's email, I can't see that.

2 MR. STUKENBERG: Yeah, that's not coming up.

3 MR. WELMAKER: Okay. Sorry.

4 Q. (BY MR. WELMAKER) This is Mr. Ellison's email. This
5 is Missy Davis' email.

6 Do you have any reason to disagree with the
7 observation that Missy Davis' email is using the same numbers
8 that Mr. Ellison's email is using?

9 A. The numbers look the same. They state what they
10 state.

11 Q. When Missy Davis says, Your daily pay is the same no
12 matter what the hours are, is she describing a day rate?

13 A. I don't know what she's describing. That's factually
14 inaccurate and not what's represented in the pay stubs that you
15 have.

16 Q. Did someone tell Missy Davis to send this out, or did
17 she just do it on her own?

18 A. I can't tell that from this email.

19 Q. Do you know? Not -- just based on your personal
20 knowledge as the corporate rep for all four entities.

21 A. Do I know whether she sent the email on her own? No.

22 Q. Did she get reprimanded for sending out this email?

23 A. Not that I'm aware of.

24 Q. I'm showing you what's been marked as Exhibit 9.

25 (Exhibit 9 marked.)

1 Q. (BY MR. WELMAKER) And it is three pages. So tell me
2 when you're ready to talk about it.

3 A. If you could expand the size of that a little bit. I
4 can't read it.

5 Q. Tell me where -- do you want it at the top expanded
6 and then to go down?

7 A. Yeah. That would be great. Thank you.

8 Q. Do you want me to start at the last page and go up?

9 A. Top down is fine.

10 Q. Okay.

11 A. Okay. Okay.

12 Q. Okay. That's the end of the first page. I'm
13 starting at the top of the second page.

14 A. Okay. All right.

15 Q. Okay. Are you ready to talk about this exhibit?

16 A. Yes.

17 Q. Have you seen this email before?

18 A. Not that I recall.

19 Q. Okay. It's from J.D. Kinsey to Jeff Beagle,
20 Alexander Kalman, Ken Kinsey and Keith Ellison. It's dated
21 November 21st, 2017. And it is entitled Updated Pay Structure.

22 Did I read that correctly?

23 A. Yes.

24 Q. Okay. Mr. Kinsey says, Hey, Jeff and Alex. This is
25 the pay structure that Keith and Ken have agreed on for the

1 employees in Puerto Rico -- PR.

2 Did I read that correct?

3 A. Yes.

4 Q. Okay. So is he saying that Keith Ellison and Ken
5 Kinsey have gotten together and created or assisted in creating
6 the pay structure applicable to Puerto Rico employees?

7 A. The email states what it states. That's not what I
8 read it.

9 Q. How do you read it?

10 A. This entire email chain appears to be referencing
11 salaried employees and a structure around the salaried
12 employees.

13 MR. WELMAKER: Okay. So this is Bates-stamped
14 1976 -- I mean 1975. I'm marking this next one -- it's
15 Bates-stamped 1976 -- as Exhibit 10.

16 (Exhibit 10 marked.)

17 Q. (BY MR. WELMAKER) It's one of the natives that I
18 sent over, but I tried to PDF it just for ease of reference.

19 So this is ostensibly what Mr. Kinsey attached
20 to the email that we just read.

21 MR. STUKENBERG: Just to clarify, Doug, Is it
22 attached, or are you guessing it's attached? Help me
23 understand.

24 MR. WELMAKER: I'm using the Bates stamp order
25 to determine that it is attached.

1 MR. STUKENBERG: Okay. But you don't actually
2 have the native with the attachment?

3 MR. WELMAKER: Well, I've got the native here.
4 I mean, I can try to share my --

5 MR. STUKENBERG: The native email, I mean.

6 MR. WELMAKER: Oh, I see, like -- I think the
7 native email is gonna be the one immediately preceding this in
8 the Bates stamp order. Am I wrong?

9 MR. STUKENBERG: I don't know. I'd have to look
10 at the actual native email. But you can go ahead and ask him
11 questions. I guess we'll just make an objection that there's
12 not a foundation this is actually the attachment. We're just
13 assuming it is based on the Bates order, which is what I think
14 I understood you to say.

15 MR. WELMAKER: Yeah, I mean, so here's 1975.
16 This is native 1976. So if you want, here is 1975, the same
17 email just without my highlighting. Hey, Jeff and Alex, this
18 is the pay structure. 1975 at the bottom. 1976, produced in
19 native format. And then I assume that the spreadsheet that
20 says Mammoth 1976 is the attached spreadsheet. I don't know
21 how else to interpret that.

22 MR. STUKENBERG: Sure. Now I understand what
23 you're saying. I don't know offhand. So I'll just go ahead
24 and object on that basis. But you can go ahead.

25 MR. WELMAKER: Yeah, I don't understand what

1 your objection is.

2 MR. STUKENBERG: We are assuming that this is
3 the attachment just based on the Bates numbers, correct?

4 MR. WELMAKER: Well --

5 MR. STUKENBERG: I'm just objecting that this is
6 not actually the attachment. I don't know if it is or not.

7 MR. WELMAKER: Okay. If it's represented by a
8 placeholder that says 1976 and I'm showing you the native that
9 says 1976, I just -- I don't know what else to do.

10 MR. STUKENBERG: Sure. I understand.

11 MR. WELMAKER: Okay.

12 Q. (BY MR. WELMAKER) And so what I want to draw your
13 attention to, Mr. Layton, this email was sent November 21st,
14 2017. Assuming I'm right and that this is an attachment to
15 this email, which I think it is, we're in November 20 -- 21st,
16 2017.

17 And do you agree that the numbers for the
18 general foremen, the foremen, the journeymen/linemen, et
19 cetera, are the same as those set forth in Mr. Ellison's email
20 from October 19th? And I can go back and I can switch and show
21 them to you, if you want.

22 A. Those appear to be the same as the budgeted amounts
23 that Mr. Ellison communicated.

24 Q. Okay. And up here, this column that I've shaded in
25 green is saying Day Rate, correct?

1 A. Yes. Those are all salaried employees, which is what
2 that email chain appears to be referencing.

3 Q. Okay. Is this group from 28 to 35 considered to be
4 salaried employees?

5 A. The general foremen, I believe, were salaried
6 employees. The foremen and below were all hourly employees as
7 we can see on their earning statements.

8 Q. And here, though, it's stating that they're being
9 paid a day rate, correct?

10 A. It's not stating they're being paid anything. It's
11 an Excel file that states what it states. If we want to see
12 what they're being paid, we'd go to their earnings statements
13 which showed they were paid hourly and overtime for the foremen
14 and below.

15 Q. Okay.

16 MR. WELMAKER: Objection, nonresponsive.

17 Q. (BY MR. WELMAKER) The numbers following each
18 position description from, let's say, 29 to 35 have appeared or
19 have been placed in a column labeled Day Rate, correct?

20 A. The document states what it states.

21 Q. Is that correct?

22 A. The document states what it states.

23 Q. Is it correct?

24 A. Again, third time, the document states what it
25 states.

1 Q. Are the numbers that we're seeing in columns -- in
2 Rows 29 through 35 in a column that says Day --

3 A. You broke up. Can you repeat that, please?

4 Q. Do you see Column D?

5 A. Yes.

6 Q. What does it say?

7 A. It has a number of items in Column D. The heading is
8 Day Rate.

9 Q. Okay. Under the Day Rate heading, are there numbers
10 supplied for Rows 29 through 35?

11 A. Yes. Again, the document states what it states. If
12 we wanted to see how each of these classifications were
13 actually paid, we'd go to their earnings statements, which
14 reflected they were paid hourly and overtime.

15 Q. Okay.

16 MR. WELMAKER: Objection to everything after the
17 word "if."

18 Q. (BY MR. WELMAKER) I'm showing you what's been marked
19 as Exhibit 11.

20 (Exhibit 11 marked.)

21 Q. (BY MR. WELMAKER) Which came from Aaron Maldonado
22 and was sent over prior to Mr. Maldonado's deposition. This
23 appears to be from Missy Davis. And she's talking about
24 orientation scheduled for March 20, 2018.

25 Do you see that?

1 A. Yes.

2 Q. Talking about hotel arrangements, physicals, DOT. So
3 now we're in March of 2018. And she has set out what she calls
4 a pay scale.

5 Do you see that?

6 A. Yes.

7 Q. Can you read to me what the pay scale says?

8 A. It states what it states.

9 Q. I'm asking you to read it, please.

10 A. Foremen, \$1250 per day. JL, 1,000 per day. Class A,
11 900 per day. Class B, 800 per day. Hot apprentice, 700 per
12 day. Groundmen, 600 per day.

13 Q. And if we go back to Missy Davis' email from almost
14 four months earlier, those are exactly the same rates that
15 she's citing in that email, aren't they?

16 A. For context, I don't think the budgeted amounts
17 changed throughout the storm-restoration period.

18 Q. I'm not asking for context. I'm just asking if
19 they're the same.

20 A. And I answered your question that they're the same
21 throughout --

22 Q. They --

23 A. Look, I'm not gonna sit here all day and have you
24 interrupt my answers. It interrupts my thought process, and I
25 can't continue to try to answer your questions completely and

1 concisely if you're gonna continue to interrupt me.

2 Q. Are you done?

3 A. I'm not the one that's interrupting you. You're the
4 one interrupting me. And I'm asking you again to please stop
5 so that I can answer the questions completely and concisely.

6 Q. Are the rates that Missy Davis set forth in this
7 October 23, 2017, email the same as the rates that she sets
8 forth in Exhibit 11, which is in March of 2018?

9 A. They appear to be the same. For context, the
10 budgeted amounts did not change throughout the
11 storm-restoration period.

12 Q. Okay.

13 A. If we want to see how these employees were actually
14 paid, we'd go to their earnings statements and we can see that
15 they were paid hourly and overtime.

16 Q. All right.

17 MR. WELMAKER: Objection, nonresponsive to
18 everything after "for context."

19 Q. (BY MR. WELMAKER) I'm gonna shift gears and ask a
20 little bit about time. Was everyone credited with working 16
21 hours per day?

22 THE COURT REPORTER: I'm sorry. You froze up.
23 Can you repeat that for me?

24 Q. (BY MR. WELMAKER) Was everyone credited in Puerto
25 Rico in, let's just say, the time periods that are applicable

1 to my case, February 2, 2018, through July 22, 2018. Were all
2 those men on the island credited with working 16 hours a day?

3 A. Are you talking about specifically your ten people or
4 who is the universe of people? I don't understand.

5 Q. The linemen. You can confine it to my guys also, if
6 that makes it easier.

7 A. I don't know how I can answer a universal question.
8 I don't think that's a topic you designated for me to review
9 the thousands of pay stubs, so I'm not sure I can answer a
10 universal question. If you can dial it in, I'll try to answer
11 it as best I can.

12 (Exhibit 72 marked.)

13 Q. (BY MR. WELMAKER) I'm gonna show you what's been
14 marked as Exhibit 72, Juan Santiago's Time Detail Report.

15 Do you see his Total Hours work column?

16 A. Yes. Could you enlarge that a little bit? I can't
17 read it.

18 Q. There's a day rate here. But for purposes of what
19 I'm trying to do, just ignore it. Let me ask you this: Did
20 Mammoth track time of the linemen that were working in Puerto
21 Rico?

22 A. Which Mammoth are you referring to, and how does that
23 relate to the 5 Star Electric employing entity that appears to
24 be referenced on this --

25 Q. Sorry. That's my fault.

1 Did -- let's just confine it to Higher Power and
2 5 Star. Did they track time for employees working in Puerto
3 Rico?

4 A. Yes. And that's reflected on the Time Detail Reports
5 for each of the employees.

6 Q. And would you be referring to the Time Detail Report
7 we're looking at right here?

8 A. Yes.

9 Q. Okay. So how did they track time? I want you to
10 list every single way time was tracked by Mammoth -- I mean, by
11 5 Star or Higher Power.

12 A. So the process that was implemented, generally, the
13 employees were required to show up at a yard in most cases
14 around 7:00 a.m. The foreman and general foreman would, you
15 know, take note of who was there. That would be communicated
16 to the superintendents as well as to the payroll folks. And
17 then the processes at the end of the day were that the foreman
18 and general foreman were aware of the DOT standard at 16 hours,
19 which requires an eight-hour rest period or reset. We set that
20 16-hour threshold intentionally such that there were processes
21 to identify, report and capture any hours in excess of 16 hours
22 so that employees could be compensated in the event they worked
23 more than 16 hours.

24 One, because we felt it was highly unlikely that
25 the employees would exceed 16 hours due to the daylight periods

1 in Puerto Rico being about 12 hours. The customer being PREPA
2 that didn't want to work at night. The general lack of
3 lighting to be able to work at night. And most important, the
4 increased safety hazard that comes along with working at night.
5 And then contextually, during this particular time period that
6 we were looking at, a lot of the work was done in the El Yunque
7 National Forest for which work was restricted by the U.S.
8 Forest Service in regards to ingress and egress as well as
9 through the paths in which we could access the forest. But I
10 think most importantly, we relied on the foremen, which are
11 also hourly employees.

12 So to the extent their crews worked more than
13 16 hours, the foremen had a self-benefiting incentive to report
14 any excess hours to be compensated for. And we'd seen that
15 work in other named storms in which foremen would capture a
16 report and employees would be paid for excess hours. So
17 process-wise that's what we implemented.

18 Q. Okay.

19 MR. WELMAKER: So all that I'm objecting to as
20 nonresponsive.

21 Q. (BY MR. WELMAKER) And my question to you is this:
22 How was time tracked? Was there a piece of paper that people
23 would sign in on the time that they arrived at the safety
24 meeting? Was there a piece of paper that people would sign out
25 on when they finished for the day? Was there an iPad that they

1 signed in or signed out on? I want to know how 5 Star and
2 Higher Power went about tracking and recording actual hours
3 worked. I don't care if they went over 16 hours. I'm not
4 talking about that.

5 How did they record actual hours worked?

6 A. That's an extremely compound question. And I gave
7 you the process that was implemented such that we, as the
8 employer, had a process to identify hours worked in excess of
9 16 hours and report and pay for those hours. If you would
10 break down that compound question, I'll be happy to try to
11 address each one of those points. But process-wise, I've
12 covered that.

13 Q. Did Higher Power or 5 Star note the time an employee
14 began working each day?

15 A. The exact hour and minute, no. There were processes
16 in place and supervisors had knowledge and we'd seen it work
17 previously in order to capture, report and compensate for hours
18 in excess of 16.

19 Q. All right. Let me help you. I don't care about
20 hours in excess of 16. I'm never gonna ask about that. So you
21 can just exclude that from all further answers.

22 How did Higher Power or 5 Star write down or
23 otherwise record the time an employee reported for duty in the
24 morning?

25 A. Again, the foreman and general foreman were aware of

1 when their crews showed up in the morning. They were also
2 aware of the 16-hour DOT threshold. The foremen were
3 self-incented to report their crews working in excess of
4 16 hours. So exact hour and minute of start time, that's not
5 captured anywhere.

6 However, there were processes in place for those
7 foremen and general foremen to identify, capture and report any
8 hours in excess of 16 hours.

9 Q. Okay. So nobody wrote down the time somebody
10 reported to work in the morning; is that correct?

11 A. That's correct.

12 Q. Did anybody write down the time each person took for
13 lunch?

14 A. No.

15 Q. Did anybody write down the time a person stopped
16 working each day?

17 A. No. But there were processes in place such that if
18 an employee worked more than 16 hours that the foreman could
19 identify, capture and report that we'd seen effective in
20 previous storm-restoration efforts, for which we implemented in
21 this particular effort as well.

22 Q. Okay. I'm gonna show you what has been marked as
23 Exhibit 13.

24 (Exhibit 13 marked.)

25 Q. (BY MR. WELMAKER) And I'll start by enlarging it at

1 the top. And just tell me when you're ready for me to move it
2 down.

3 A. Okay. All right. Okay. Okay.

4 Q. Okay. Is that enough for you to have familiarized
5 yourself with it?

6 A. Yeah. I'm not anywhere on any of these emails or
7 referenced in any of these emails, but I can talk about
8 processes in place at the time.

9 Q. Okay. What I want to draw your attention to is on
10 the second page where Alexander -- Alexander Kalman on the
11 first -- on this first page is asking for a number of questions
12 to be answered. And above that, Ken Kinsey is providing
13 answers.

14 It's the second question that I'm interested in.
15 Mr. Kalman has said: In the same vein, can we confirm that
16 hourly employees should only receive their day rate and not
17 their hourly rate in addition to their day rate, correct?

18 And then Mr. Kinsey says: All hourly employees
19 will get their PR rate only.

20 What does he mean when he says: All hourly
21 employees will get their PR rate only?

22 A. The email states what it states. Again, I'm not on
23 any of these emails nor am I referenced in any of these emails.
24 I can talk about process, and we can certainly look at earning
25 statements to see how the hourly employees were paid which

1 reflect that they were paid hourly and overtime.

2 Q. Do you know what is meant when he says: All hourly
3 employees will get their PR rate only?

4 A. Again, I'm not on this email. I'm not referenced in
5 this email. I'm happy to discuss process, and we can clearly
6 see on the earning statements that the hourly employees were
7 paid regular and overtime.

8 Q. Okay. Have you seen this email before?

9 A. I believe so.

10 Q. Have you testified about this email before?

11 A. I don't recall. But again, I'm not on this email.
12 I'm not referenced in this email. The email states what it
13 states.

14 Q. Okay. I don't think my designation of the corporate
15 representative is contingent upon whether you are on or in an
16 email.

17 MR. WELMAKER: Is that your reading of it, Will?

18 MR. STUKENBERG: I mean, I think it depends on
19 which particular topic. But as a general matter, yes, to the
20 extent that that information is reasonably available and
21 accessible to Mr. Layton, he can testify as to what the
22 company's knowledge is.

23 Q. (BY MR. WELMAKER) Can you do that, Mr. Layton?

24 A. Yes. We can see on the earning statements that the
25 hourly employees were paid hourly and overtime.

1 Q. Okay. What does it mean when it says: All hourly
2 employees will get their PR rate only?

3 A. Again, I'm not on this email. I'm not referenced in
4 this email. If we want to see how the employees were paid, we
5 can look at the earning statements and see exactly how they
6 were paid. They were paid hourly and overtime.

7 Q. Let me ask you a question. When you got my
8 deposition notice asking you to familiarize yourself with a
9 number of different subjects, how much time did you spend
10 preparing for this deposition?

11 MR. STUKENBERG: For this particular deposition
12 or cumulatively for depositions in this litigation? I just
13 want to get a clarification on that because there is a lot of
14 overlap.

15 MR. WELMAKER: This particular one.

16 A. This particular deposition, I probably spent ten to
17 15 hours on.

18 Q. (BY MR. WELMAKER) When did you spend that time?

19 A. Over the last three or four weeks.

20 Q. What documents did you review to prepare for this
21 deposition today?

22 A. A number of different documents.

23 Q. Which ones?

24 A. Are you asking specific documents or class, like
25 class of documents? What's the question entail?

1 Q. You can answer both.

2 A. Some of those will be likely covered by privilege
3 that were provided by Counsel. In a broader context, I
4 reviewed a number of time detail records as well as earning
5 statements for the claimants that you represent.

6 Q. Did you review any of the emails that have been
7 produced in this case?

8 A. Specific to this particular deposition? No. I've
9 reviewed a number of these emails at previous points in time.

10 Q. I'm gonna show you what's been marked as Exhibit 14.

11 (Exhibit 14 marked.)

12 Q. (BY MR. WELMAKER) Tell me when you're done reviewing
13 it.

14 A. Okay.

15 Q. At the bottom, why is Mr. Kalman trying to locate
16 offer letters if the offer letters were effectively
17 meaningless? Who cares what the offer letters say basically is
18 what you've told me, right?

19 MR. STUKENBERG: Objection, form.

20 A. My previous testimony speaks for itself.

21 Q. (BY MR. WELMAKER) Well, no, I'm asking why do you
22 think Mr. Kalman is looking for offer letters if what is
23 contained in those offer letters is meaningless?

24 A. I can't speculate for Mr. Kalman. From the
25 perspective of an at-will employee, correct. What I had

1 referenced earlier is that the advice we've been given is that
2 those offer letters are largely meaningless.

3 Q. I don't -- I want to clarify this by saying, I don't
4 want to provide -- I don't want you to give me any information
5 that your attorneys gave you.

6 Who provided you with the advice that the offer
7 letters are meaningless?

8 A. In regards to at-will employees, the advice we had
9 been given over a period of time from Mr. Broussard is that the
10 offer letters were largely meaningless. What matters is how --
11 how the employees were compensated. And if we want to see how
12 the employees were compensated, we can go look at their
13 earnings statements. They're all at-will employees. There are
14 no contracts. There's no assertion of a breach of contract.

15 Q. Okay. Mr. Kalman continues: I can't find offer
16 letters for them showing their day rate.

17 Should he have used the term "day rate" there?

18 A. I don't know. I'm not involved anywhere on this
19 conversation or referenced in this conversation or have the
20 ability to see whether these are salaried employees. So I have
21 no context to answer your question.

22 Q. All right. If we're going to confine answers to
23 whether you're on an email, because you're on one email, if
24 that's the standard for me asking questions, we're gonna shut
25 it down right now and we'll just get a ruling from the judge on

1 whether that's the scope of my 30(b)(6.) Is that what we're
2 doing?

3 A. I've answered all of your questions so far. So I'm
4 not sure what the argumentative statement is about.

5 Q. I thought it was pretty simple and self-explanatory.
6 If you're going to couch your nonresponse to my answers or my
7 questions by telling me that you're not on the email so that
8 you just can't venture a response about what it's about, then
9 there's no point in continuing, Mr. Layton.

10 A. Your decision as to whether to continue or not is
11 your decision. You're parsing my answer because presumably you
12 didn't like it. But I've answered every question you've posed
13 so far.

14 MR. WELMAKER: Will, are we going to limit
15 Mr. Layton's 30(b)(6) deposition to only those emails that he
16 has been CC'd on or is involved directly in?

17 MR. STUKENBERG: No.

18 MR. WELMAKER: Because I don't think that's how
19 it works.

20 MR. STUKENBERG: We are not. And I don't think
21 that that's what Mr. Layton has done. I think he's pointed out
22 the limitations in the scope of knowledge. As you know, Doug,
23 Kalman, Davis, these people are no longer employed. Trying to
24 get in the head of a former employee and what they meant when
25 they used particular words is beyond the scope of what we can

1 reasonably discover as a company to present the witness. To
2 the extent Mr. Layton knows and is sitting in his corporate
3 capacity as to what Mr. Kalman meant or why he used a
4 particular word, you know, he obviously will testify to that.
5 But, you know, we are not limiting the deposition to only what
6 emails that Mr. Layton is on. We are limiting it to what
7 Mr. Layton can reasonably discover given this happened
8 seven years ago involving former employees.

9 Q. (BY MR. WELMAKER) All right. Let's move on to the
10 next one.

11 MR. STUKENBERG: Doug, I'm not trying to
12 interrupt your rhythm, but we've been going about an hour. So
13 just whenever you get to a good stop, that'd be good.

14 MR. WELMAKER: Now is fine.

15 MR. STUKENBERG: Okay. Do you want to just take
16 ten minutes?

17 MR. WELMAKER: Sure.

18 (Break from 2:31 p.m. to 2:47 p.m.)

19 Q. (BY MR. WELMAKER) So Mr. Layton, when we were
20 talking about time, is it true that almost universally everyone
21 was credited with working 16 hours a day?

22 A. I don't know what the context of "almost universally"
23 is. I think as you look, based on my review of the time detail
24 records, that the vast majority of the time employees were
25 credited with 16 hours per day for working or being available

1 to work while in Puerto Rico.

2 Q. All right. I have just a ridiculous amount of
3 exhibits, but I'm going to try to reduce what I'm going to ask
4 you about just in the interest of time.

5 The next document I'm showing you has been
6 marked as Exhibit 15.

7 (Exhibit 15 marked.)

8 Q. (BY MR. WELMAKER) Hang on a second. Let me just --
9 I'm trying to make it so that it's bigger. Okay. It is just
10 two pages, so tell me, Mr. Layton, when you're ready to move to
11 the bottom part.

12 A. Okay. Okay.

13 Q. So I'm drawing your attention to the highlighted
14 part. Missy Davis, HR manager for 5 Star saying: There are
15 many times we entered day rates for the guys in payroll rather
16 than entering their 16 hours each day.

17 Was that normal policy, to enter in day rates as
18 opposed to 16 hours a day?

19 A. The policy was 16 hours per day. Based on my review
20 of the records, this would appear to be an instance where Missy
21 Davis is raising an issue in relation to JD Kinsey inputting
22 hard coded amounts as opposed to hours which causes an issue
23 for her hours reporting. This is one of the issues that
24 Mr. Kinsey was counseled on and ultimately led to his
25 termination I think a couple of months after this email.

1 Q. She's also asking, Do we have another way to track
2 hours worked in PR besides Paycom? How is Paycom tracking
3 hours?

4 A. Paycom was tracking hours through the Time Detail
5 Report. So that you can see in regards to the 16-hour entries
6 inside of Paycom.

7 Q. So Paycom was just picking up the 16 hours that had
8 been entered into the Time Detail Reports?

9 A. I'm not sure I follow the connection there. There
10 were 16 hours per day being input that is reflected in the Time
11 Detail Report that we can see.

12 Q. I'm showing you what's been marked as Exhibit 16.

13 (Exhibit 16 marked.)

14 Q. (BY MR. WELMAKER) And it's just one page. Let me
15 know if you need me to move it so you can see it better.

16 A. If you could expand it just a little bit, that would
17 help. Thank you. Okay.

18 Q. All right.

19 A. Okay.

20 Q. So what I want to ask you about is the top part.
21 This is from Ken Kinsey, November 17, 2017. He's saying, There
22 are employees complaining they did not get paid what they
23 expected. JD is going to gather information so the concern can
24 be addressed. We need to know what the linemen were told when
25 they were hired.

1 Is what the linemen were told when they were
2 hired going to be reflected in the offer letters?

3 A. That may or may not be the case. So based on what
4 I've seen, the offer letters are one data point, and then the
5 overwhelming majority of the linemen attended an orientation in
6 either Kentucky for 5 Star or in Plainview, Texas, in the case
7 of Higher Power in which they covered a number of things.
8 Compensation being one of them, along with safety,
9 vaccinations, you know, travel, things of that nature.

10 Q. Would you agree that the offer letter would be a good
11 starting point to determine what they were told when they were
12 hired?

13 A. I would agree that it's a data point. I don't know
14 that I agree with the rest of the conclusion that you make.
15 It's certainly an item along with what was discussed at
16 orientation, along with what we can see in the pay records.

17 Q. Here it looks like the employees are complaining
18 because their pay records are not reflecting what they were
19 told that they were going to get when they were hired. So how
20 are the pay records going to help in this particular situation?

21 A. I think you're making an assumption in your
22 statement. I think process-wise what's occurring at this
23 particular time is there were a number of questions about tax
24 withholding, specifically as it relates to -- excuse me --
25 Puerto Rico tax withholding to -- I think it will be hard or

1 impossible for me to agree with your conclusion based on my
2 knowledge of what was going on at the time.

3 Q. All right. When Ken Kinsey says, I hope they were
4 not expecting their day rate to be without taxes, what's he
5 talking about? Should he have said targeted day rate or
6 budgeted day rate?

7 A. I think as you know -- look, again, I'm not copied or
8 referenced in this email. But I think you can see in a number
9 of these emails that the term "day rate" is not a legal term of
10 art in these emails. So the team is using the terminology of
11 day rate to mean budgeted rate, which means the hourly rates
12 that were derived, approved by Broussard in regards to
13 mechanics and that we see on the check stubs.

14 Q. Why do you think that they're using it in that
15 fashion here?

16 A. Based on my review of the documents, along with
17 information I've gained, you know, through my review and
18 inquiry. They're not utilizing day rate as the legal term of
19 art like you'd like to utilize it. They're utilizing day rate
20 to reference the budgeted amounts that Mr. Ellison communicated
21 early on.

22 Q. The next document is Exhibit 17. It's just one page.

23 (Exhibit 17 marked.)

24 Q. (BY MR. WELMAKER) Tell me when you're ready to talk
25 about it.

1 A. I'm ready.

2 Q. All right. So what Missy Davis is saying is that --
3 well, why don't you tell me what you think she's saying here
4 especially with respect to the highlighted part.

5 A. Again, not copied, not referenced on this email, but
6 the context is the nature of any hourly employee. If you take
7 an hourly employee that's paid \$25 an hour and if that employee
8 doesn't work 40 hours in a work week and the communication had
9 been to the employee that they could earn \$52,000 per year,
10 clearly if they don't work the 40 hours in a work week, they're
11 not gonna make a thousand dollars, which would not, you know,
12 be around targeted number that the employee could make if they
13 worked all the hours in a work week. That's the nature of
14 hourly employees. So she is raising the issue that, hey, if
15 the employees don't work the hours, they're not going to earn
16 an average. And that's the -- that's the case with every
17 single hourly employee.

18 Q. Okay. Is she saying -- could it be that she's saying
19 that if somebody doesn't work a full two-week period that the
20 formula that's used for the employee goes off kilter and has to
21 be supplemented with a bonus or a gross-up?

22 MR. STUKENBERG: Objection, form.

23 A. No. What she's saying is that with an hourly
24 employee, if you're calculating an average for an hourly
25 employee, then using that average to communicate with the

1 employee, if the employee doesn't work the targeted number of
2 hours, then that average doesn't work. It's a function of
3 being an hourly employee forecasting the number of hours that
4 they could work in a work week. If they don't work those
5 hours, then the average doesn't work. That's the nature of an
6 hourly compensation program.

7 Q. So when she says, It messes up the day rate stuff,
8 what is she talking about? She didn't say it's messing up the
9 hourly stuff.

10 A. She's talking about a daily average as it compares to
11 the budget. Again, the day rate terminology is used loosely
12 through a number of emails to reference the budgeted amount.
13 With any hourly employee, you have to convert their earnings to
14 a work week, and you can roll that forward to a month, divide
15 it back to a day to communicate what their average could be if
16 they worked a targeted number of hours. But to the extent that
17 the days worked or hours differ, then the average differs.
18 That's, again, the nature of every hourly employee.

19 (Exhibit 18 marked.)

20 Q. (BY MR. WELMAKER) All right. Finally, we have an
21 email from you in Exhibit 18.

22 Can you see that?

23 A. No, sir. It's too small. That's better. Thank you.

24 Q. Tell me when you're ready to talk about it.

25 A. I'm ready.

1 Q. Okay. So first, at the bottom, this is you writing
2 an email to Jeff Beagle, right?

3 A. Correct.

4 Q. Why are you using your Stingray address? Yes,
5 Stingray Energy?

6 A. I don't know. That's what address came up, so that's
7 the address I used for that particular email.

8 Q. Okay. When you say "our employees," who are you
9 referring to?

10 A. This particular email chain was centered around the
11 logistics team in Puerto Rico along with the advanced or
12 management team that we sent to Puerto Rico that were all
13 salaried employees.

14 Q. Why didn't you specify that in the email?

15 A. I believe I subsequently specified that in the
16 hallway conversation with Mr. Beagle, which is why he responds
17 in reference to the executive management group and in relation
18 to the logistics team.

19 Q. When you say, "Are we paying them base salary plus a
20 day rate," what did you mean by the term "day rate"?

21 A. In this case, as it relates to salaried employees,
22 there was a day rate plan in place for them. So I was
23 inquiring about how they were being compensated specifically as
24 this inquiry references related to salaried employees.

25 Q. Okay. So you're asking about people with a base

1 salary plus a day rate. And so what is your understanding of
2 day rate as you're using it in this email? A set amount per
3 day regardless of hours worked?

4 A. Again, these are salaried employees. So as it
5 relates to this email, it doesn't have a correlation to hours
6 worked because this particular inquiry is for salaried
7 employees.

8 Q. Right. But in order to get your salary plus your day
9 rate, would you just have to show up for a day to get the day
10 rate?

11 A. In relation to salaried employees or what? What's
12 the context of the question?

13 Q. Yeah, you're asking about do they get salary and day
14 rate; do they get their base salary plus a day rate. So what
15 I'm trying to understand is what's your understanding of the
16 day rate that you're referring to in this email? Define day
17 rate as you're using it in this email.

18 A. This email references the day rate compensation for
19 salaried employees.

20 Q. And what is the day rate compensation?

21 A. The day rate compensation varied based on the
22 salaried employee's position.

23 Q. Okay. I'm not interested in the hour part of it.
24 What is the other aspect of the day rate compensation?

25 A. I'm not understanding your question.

1 Q. I'm not interested in the monetary part of the day
2 rate compensation. I just want to know what -- how would you
3 define the word "day rate" in your email? You say day rate,
4 right? So you know what it means or else you wouldn't be using
5 the words "day rate." What do you mean when you use the words
6 "day rate" in this email?

7 A. Again, I've answered that previously. This is the
8 day rate compensation program as it relates to salaried
9 employees in Puerto Rico.

10 Q. And what is the day rate compensation program as it
11 relates to salaried employees in Puerto Rico?

12 A. Salaried employees in Puerto Rico in many cases
13 received a day rate along with their base salary.

14 Q. Okay. And what is a day rate in this context?

15 A. In this context, it was a daily rate that the
16 salaried employees received in addition to their base salary
17 while working in Puerto Rico.

18 Q. That they would be entitled to each day that they did
19 work, right?

20 A. I'm not sure what the context of entitlement is.
21 That's what they were compensated for in addition to their base
22 salary for days that they worked in Puerto Rico as it relates
23 to the salaried employees.

24 Q. All right. If somebody worked five days --
25 four days, are they gonna get a day rate for five days?

1 MR. STUKENBERG: Can you repeat that, Doug? I
2 just want to make sure I heard it correctly.

3 Q. (BY MR. WELMAKER) If someone worked four days,
4 they're going to get their salary for the entire work. We know
5 how salaries worked. But if they didn't work Friday, are they
6 going to get the day rate pay for Friday?

7 A. If the employee is off on Friday or not in Puerto
8 Rico on Friday, then generally they would not receive the day
9 rate in this case for the salaried employees in Puerto Rico.

10 Q. What if they worked one hour on Friday, are they
11 gonna get the day rate?

12 A. I guess it would depend on context as it relates to
13 the salaried employee. I'm not aware of any instance in which
14 that occurred, so I'm not following the hypothetical.

15 Q. All right. Look at the very top where Mr. Beagle
16 responds to you. It looks like he's confining the first
17 sentence to hourly employees only.

18 Do you agree with that?

19 A. Yes, the first sentence references hourly employees.

20 Q. Okay. And he says, They get an effective day rate at
21 a 16-hour shift.

22 Do you agree with that statement?

23 A. In that particular --

24 MR. STUKENBERG: Objection, form.

25 A. -- context, his statement states what he states.

1 What he's getting at and the way I understood it is that if the
2 employees worked the entire work week, they would earn on
3 average an amount very close to the budgeted amounts. Again,
4 day rate is a term that's utilized by the team as shorthand
5 that references those budgeted amounts that were utilized in
6 conversation with Broussard and upon which Broussard ultimately
7 gave a green light in relation to the calculation of the hourly
8 rates that were ultimately implemented.

9 MR. WELMAKER: Objection, nonresponsive.

10 Q. (BY MR. WELMAKER) For an hourly employee that gets
11 an effective day rate at a 16-hour shift if he works less than
12 a full week, he's going to get less than the targeted amount,
13 correct?

14 A. Yes. And that's the nature of hourly employees, and
15 that's what we see in practice in the pay stubs.

16 Q. Okay. Does -- were employees that were in that
17 situation, was their pay supplemented with what you would call
18 discretionary bonuses?

19 A. In some cases, the employees received discretionary
20 bonuses. In other cases, they did not. And we see that borne
21 out across the pay stubs. That's the nature of discretionary
22 bonuses. Sometimes, they're paid. Sometimes, they're not.

23 Q. I'm gonna show you Exhibit 19. It's got seven pages.

24 (Exhibit 19 marked.)

25 Q. (BY MR. WELMAKER) So just tell me when to advance.

1 A. Just to be more efficient, I may pull that up on
2 screen just to flip through it at my own pace.

3 Q. Okay.

4 A. Okay.

5 Q. All right. So I want to direct your attention to the
6 last page, 1886. JD Kinsey is asking Alex Kalman, There are
7 going to be many guys that will need to have their rates
8 adjusted. Whether because they're new to the island or they
9 were on rotation. How do you want me to gather that
10 information for you?

11 And then at the top of the next page, he says,
12 Hey, Alex and Bethany, here's an updated spreadsheet. To the
13 best of my knowledge, I have added all hourly employees that
14 did not work a full 14-day schedule. I put how many days they
15 worked, the classification, their rate and what they should
16 receive for the check. I don't know how you want to process
17 this or adjust amount owed versus the amount their hourly rate
18 shows.

19 So what Mr. Kinsey is talking about -- and
20 correct me if I'm wrong -- is if an employee works less than a
21 full 14-day period, his pay is going to be less than the
22 targeted pay amount, right?

23 A. Yes. The pay would be less than the budgeted
24 amounts. Again, that's the nature of hourly employees. If
25 they work less, then they earn less, and that's what's

1 reflected on the check stubs.

2 Q. So he says he put also what they should receive for
3 the check, which, I guess, would be the targeted rate that they
4 were promised in their offer letter multiplied by the days
5 worked. And is what he's asking here how are we gonna make up
6 the shortfall?

7 A. I think your context of saying what they were
8 promised is inaccurate. That's not the case. So Mr. Kinsey is
9 identifying and the team is circulating a spreadsheet
10 process-wise that identifies the short weeks. This
11 spreadsheet, if you want to view it from a process standpoint,
12 is really a conversation starter such that the team can review
13 it with the managers to make sure that they have the right
14 dates that employees came on or off the island such that, you
15 know, they make sure to double-check the input in the payroll
16 system.

17 It was also a conversation starter for the
18 discretionary bonuses, meaning that the managers had a labor
19 budget to operate within. And they had the ability to grant
20 these discretionary bonuses based on the criteria that I
21 mentioned earlier today.

22 So based upon that information, the managers
23 could take a look at it. And if they so opted, they had some
24 room within their budget for these short work weeks to offer
25 discretionary bonuses to the employees. And, in fact --

1 Q. And so --

2 A. -- if --

3 Q. Go ahead.

4 A. If you were to look at the detail and follow them
5 through to the check stubs, you would see that in some cases
6 the discretionary bonuses were paid, and in other cases they
7 were not.

8 Q. So the problem comes up when someone works less than
9 a full work week; is that correct?

10 MR. STUKENBERG: Objection, form.

11 A. It's not a problem. It's a function of an hourly
12 employee. So the hourly employee earns whatever they earn
13 based on the hours worked and their rate and whether or not
14 they're in the overtime. From a management perspective, if the
15 employee works a short week, that creates a budget surplus, if
16 you will, for the manager for which they have discretion which
17 in sometimes they utilize that discretion to make discretionary
18 bonuses. In other points in time, they didn't.

19 Q. (BY MR. WELMAKER) Okay. And then on 1884, Kinsey
20 again is discussing the shortfall here: All of the guys that
21 Marc supplied us with have adjusted their time accordingly, but
22 because of the rate structure, when someone has even one day
23 off, it affects the overall rate and so their time needs to be
24 adjusted or a day rate entered to adjust for the missing
25 amount.

1 Where does he in that statement talk about
2 whether it's discretionary or whether the adjustment could be
3 made?

4 A. I think contextually as you look at this, JD Kinsey
5 has no ability to authorize a discretionary payment to anybody.
6 JD Kinsey is a payroll clerk. So to put the dialogue in
7 context, he has no authority to approve any pay adjustment, pay
8 change, discretionary bonus for anyone. That has to be
9 approved by a supervisor.

10 Q. Okay. But do you agree when -- because of the rate
11 structure, when someone has one day off, it affects the overall
12 rate?

13 MR. STUKENBERG: Objection, form.

14 A. The nature of hourly employees is that if they work
15 less hours than a targeted or budgeted amount, then they will
16 earn something different than that targeted or budgeted amount.
17 If you look at the, quote/unquote, rate, you can see from each
18 of your ten claimants that their hourly rate was not adjusted
19 while they were in Puerto Rico unless they were promoted,
20 demoted, rolled off the island. When they were on the island,
21 they received the same hourly rate, so it was not an instance
22 in which the hourly rate was manipulated or changed. The
23 employees' hourly rates were consistent absent, you know, a
24 promotion, demotion, demobilization.

25 Q. (BY MR. WELMAKER) Well, what you also saw was that

1 if they worked less than a full two-week period, their day --
2 their rates were adjusted up with different levels of what you
3 would call a discretionary bonus to get them to their targeted
4 rates, right?

5 MR. STUKENBERG: Objection, form.

6 A. That's not what's reflected in the earning
7 statements. So I would disagree with your statement. The
8 earning statements --

9 Q. (BY MR. WELMAKER) All right. We'll go through
10 those --

11 A. The earning statements reflect something completely
12 different than your conclusory statement.

13 Q. Okay. Well, we will look at that, and we'll see
14 who's right.

15 On the very first page of Exhibit 19, we have
16 Alex Kalman saying, I'm still working through all the changes
17 on the spreadsheet to get the actual amount owed for each
18 employee. Please send me any additional changes needed as soon
19 as possible.

20 Where does it talk about discretionary bonuses
21 for each employee?

22 A. Again, the process of discretionary bonuses I've
23 discussed earlier, as well as the characteristics and approval
24 thresholds. If you were to pull this particular spreadsheet,
25 you would see that there are numerous individuals listed on the

1 spreadsheet that did not receive any discretionary bonus.

2 So, again, the process was for the team to
3 circulate the spreadsheet for conversation generator that
4 encompassed a number of things. Short work week,
5 direct-deposit issues relative to routing or account numbers,
6 change in pay if there were a promotion or demotion. The
7 spreadsheet referenced a number of issues. But I think the key
8 takeaway as it relates to this email is you'll see that there
9 were numerous individuals on this particular spreadsheet that
10 received no discretionary bonus.

11 Q. Okay. Well, why does he use the term actual amount
12 owed? If it's -- if these adjustments are discretionary, why
13 is he talking in terms of actual amount owed?

14 A. Again, similar to previous, Mr. Kalman has no ability
15 to approve any discretionary bonus. This Excel sheet that's
16 being circulated is merely a conversation generator.
17 Ultimately, any discretionary bonus had to be approved by an
18 operational supervisor meaning either a superintendent or
19 president of the organization. And they base their criteria on
20 morale, safety, showing up on time, things I mentioned earlier.

21 Q. I'm showing you what's been marked as Exhibit 28.
22 It's three pages.

23 (Exhibit 28 marked.)

24 Q. (BY MR. WELMAKER) Do you want me to enlarge it for
25 you?

1 A. Yeah. That's great. Thank you.

2 Q. Can I move to the next page?

3 A. Yes, please.

4 Okay. Okay. All right. Okay.

5 Q. All right. So I want to draw your attention to the

6 highlighted part on Bates-stamped 1935. So this is Jeff

7 Beagle, the HR director, for Mammoth Energy, correct?

8 A. Mammoth Energy, Inc., yes.

9 Q. And he's saying, Gross up for pay. The other item
10 will be on the gross up for pay. What is a gross up for pay?

11 A. He's identifying the short work week issue as it
12 relates to the budgeted amounts, it appears.

13 Q. He says, Since we're paying 16 hours per day to get
14 the daily rate for the week, as you know, depending on when the
15 employee arrived (the day of the week) they may have been
16 shorted some pay as it did not calculate out to the full day
17 rate since it was not a full week.

18 That's what we've been talking about, right? If
19 you don't work a full week, it doesn't get you to the full
20 targeted amount, right?

21 A. Yes.

22 Q. Okay. So the HR director for Mammoth Energy, Inc.,
23 is saying for those people we're going to gross up their pay to
24 make it equal to targeted amount; is that right?

25 A. That's not what he's stating. So if you look at the

1 process that was ultimately implemented, it resulted in the
2 circulation of a spreadsheet amongst the HR folks that was
3 utilized to generate a conversation with the operational
4 personnel. And the operational personnel had the optionality
5 to offer discretionary bonuses within their budgeted labor
6 amounts or to not.

7 And if we look what happened in the payroll
8 records, we can see that, in fact, sometimes just discretionary
9 bonuses were paid. And in other times, they were not. And
10 that's the nature of discretionary bonuses. But we can see in
11 clear detail in the records that sometimes they were made and
12 sometimes they weren't.

13 Q. Is it that sometimes they weren't because somebody
14 missed them?

15 A. Sometimes they weren't paid because they're
16 discretionary. So based on the criteria that I mentioned, they
17 weren't promised. They weren't guaranteed. The operational
18 supervisors had budgeted amounts that they could work within.
19 And sometimes they offered discretionary amounts to the
20 employees and sometimes they didn't. And that's at the
21 discretion of the managers.

22 Q. Okay. Are you aware of a situation where somebody
23 was eligible for a discretionary bonus and they weren't given
24 it for a specific reason?

25 A. You don't have to have a specific reason to not grant

1 a discretionary bonus, so --

2 Q. Well, then how do you know -- how do you know if it's
3 not being granted because it was just overlooked?

4 MR. STUKENBERG: Again, Doug, if you would let
5 Mr. Layton finish his answer, please. I don't think he was
6 done.

7 Q. (BY MR. WELMAKER) Go ahead. I'm sorry. I didn't
8 mean to interrupt you.

9 A. So, again, discretionary bonuses, sometimes they're
10 paid. Sometimes they're not. That's at the discretion of the
11 manager. You don't necessarily document the negative or a
12 disapproval of a discretionary bonus. You either approve it
13 and pay it or you don't. And you can see clearly in the pay
14 records that sometimes discretionary bonuses were paid, and
15 sometimes they were not. And that's completely at the
16 discretion of the operational managers.

17 Q. How do you distinguish those discretionary bonuses
18 that were not paid on purpose versus those that were simply
19 missed?

20 A. Again, there wasn't a requirement to make these
21 discretionary bonuses. So as we look at the detail, there were
22 none that were missed. They were either approved by
23 supervisors and paid or they were not approved and not paid.

24 So the connotation that they were missed is
25 inappropriate from my standpoint. The employees were paid for

1 the hours that they worked and reflected on their earnings
2 statements. In some instances, they received discretionary
3 bonuses as approved by supervisors. And in other instances
4 they didn't. That's the nature of discretionary bonuses.

5 Q. And we'll get into this in a second, but is there any
6 paperwork showing any kind of approval of a discretionary bonus
7 or disapproval of a discretionary bonus?

8 A. Again, I wouldn't expect to see a disapproval. I've
9 not seen a disapproval of a discretionary bonus in my 25-year
10 career. It's either approved and paid or it's not. You don't
11 document a disapproval in regards to documentation of
12 approvals. These were done verbally. They were done in small
13 amounts that were within the budgeted amounts that were set
14 forth in regards to labor.

15 So as you look at it from a supervisor's
16 standpoint, the supervisors were given budgeted labor amounts.
17 They were living within those budgets. And in some cases, they
18 approved discretionary bonuses that were within their
19 operational budgets. And again, they were relatively small in
20 amount and infrequent in nature.

21 Q. So what you're saying is there is no form reflecting
22 either an approval or a disapproval of these discretionary
23 bonuses; is that correct?

24 A. There's nothing in writing nor would I necessarily
25 expect that there would be given the relatively nominal amounts

1 involved combined with the fact that we're dealing
2 situationally at this particular time frame with an island that
3 had 1 and a half percent of the island that had power. So
4 communications on the island in this November time frame were
5 virtually nonexistent for the most part. There was
6 approximately 1.5 percent of the island that had electricity at
7 this time. In addition, the cell phone communication grid on
8 the island suffered a similar fate to the electrical grid in
9 that it was functionally completely destroyed.

10 Q. All right. Well, in light of the fact that
11 communication was extremely difficult, as you just relayed to
12 us, how is it that we're going to have a situation where a
13 supervisor is going to call up, I guess, some sort of a manager
14 and say, hey, is this guy doing a good job? Should we give him
15 \$110.20 bonus? And that's all gonna be done before the next
16 payroll comes up. So how did that process work?

17 A. General foremen are working supervisors meaning that
18 they're out in the field. They liaise regularly with the
19 superintendents that are also out in the field. So have daily
20 communications as to their crews, how effective or ineffective
21 their crews were, the morale of their crews, whether or not
22 they showed up on time. And then as you roll through the chain
23 of command, certainly, the superintendents would have occasion
24 to discuss with the office personnel the crews that either
25 performed or didn't perform and be able to approve any

1 discretionary bonuses that they desired.

2 Q. Okay. So you've got a situation where they've got,
3 like, the people that need the potential discretionary bonuses,
4 I guess, their names are gonna be on a piece of paper because
5 they're not gonna be able to be memorized, right? So they're
6 going to take the piece of paper out into the field because
7 there's virtually no communication, and they're going to go to
8 the manager and say, hey, this guy, 53.46, yes or no, is he
9 good enough to give him 53.46? And this next guy, 110.58,
10 good, yes or no? How is that gonna work, practically speaking?

11 MR. STUKENBERG: Object to form.

12 Q. (BY MR. WELMAKER) I mean, that's ridiculous.

13 MR. STUKENBERG: Objection, form. Objection to
14 commentary.

15 A. Do you have a question that you want me to --

16 Q. (BY MR. WELMAKER) Yeah. How does it work?

17 A. Then if you would ask me how it works rather than the
18 prologue of a compound question of a bunch of assumptions that
19 you're making, then that would make this go a lot smoother, in
20 my opinion.

21 Q. Go ahead.

22 A. What's the question?

23 Q. How does it work?

24 A. In regards to the approval, again, I mentioned kind
25 of the chain of command from foreman to general foreman to

1 superintendent. The superintendents routinely liaise with the
2 office staff in regards to where work was being assigned as
3 well as the performance in the field of that work. So the
4 superintendents would have contact with personnel on the ground
5 such as JD Kinsey to be able to go through these spreadsheets
6 or discussion generators as you may look at them to say, hey,
7 these linemen or these skilled laborers work short weeks. We
8 understand that creates a surplus in your labor budget. Would
9 you like to offer any of these discretionary bonuses? If so,
10 let me know. If not, then we'll process the payroll as is. So
11 that corresponds with the interaction between the
12 superintendents and the office staff on a routine basis.

13 Q. So is the discretionary bonus process, is it tracked
14 in any way?

15 A. I'm not sure what I -- what the context of tracked
16 any way means. You can see that there were discretionary
17 bonuses paid on the earnings statements. You can see those
18 amounts on the Time Detail Reports. I'm not sure I understand
19 what the context of tracked means.

20 Q. So Supervisor A needs to determine whether to give a
21 \$50 bonus to lineman because of his rate is potentially up for
22 being adjusted. Is there any kind of a form saying, Yes, he
23 approved, the supervisor approved? Is there any kind of
24 recording of that process?

25 A. In regards to paper documentation? No. We've

1 covered that previously. There's no paper document --

2 Q. Electronic. Electronic. Spreadsheets.

3 A. Again, I'm trying to answer your questions. You're
4 talking over me again. And if you'd just let me finish my
5 answers, I'd probably address the majority of your questions
6 without these constant interruptions.

7 Q. Are there electronic spreadsheets or any other
8 electronic methods by which an adjustment -- a discretionary
9 adjustment is reflected, recorded, accepted, rejected,
10 whatever?

11 A. There are no paper documents that would show an
12 approval. There aren't any electronic documents that I've seen
13 in regards to Excel sheets that would reference an approval.
14 You can see the Excel documents that are used as conversation
15 generators, if you will, that were circulated. And then you
16 see from those documents that some discretionary bonuses were
17 paid and others were not, if you go from those Excel sheets to
18 the detailed earning statements. The detailed earning
19 statements and time detail records would each reflect amounts
20 that were paid.

21 Q. And so is this all originating from payroll and then
22 it goes from payroll to a supervisor? Payroll alert
23 supervisor, hey, this person may be entitled to a discretionary
24 adjustment?

25 A. Again, there's no entitlement. It's a discretionary

1 payment. So if it was paid, it was paid. There is no
2 entitlement to anything.

3 Q. They may be eligible. Does payroll get in touch with
4 the supervisor and say that there may be some eligibility for a
5 discretionary adjustment?

6 A. There is no eligibility. A discretionary payment is
7 a discretionary bonus. It's at the discretion of the
8 supervisor.

9 Q. If the person doesn't work a full week and they're
10 below their targeted amount, does payroll then get in touch
11 with the supervisor and say, hey, what are you gonna do? Are
12 you gonna give a discretionary bonus? How does that work? I'm
13 trying to figure out does it originate from payroll.

14 MR. STUKENBERG: Objection, form.

15 A. The conversation could start from payroll. It could
16 start from the supervisor. So one, the supervisor has to
17 notify the payroll group that I have an employee that is either
18 transferring off the island or transferring to the island such
19 that the payroll department knows that that person is in Puerto
20 Rico. So the discussion can go either way in regards to when
21 an employee arrives or leaves the island for this work.

22 Q. (BY MR. WELMAKER) All right. I'm going to show you
23 Exhibit 24.

24 (Exhibit 24 marked.)

25 Q. (BY MR. WELMAKER) It is three pages. It says my

1 screen sharing is paused. I'm not sure why. Hang on.

2 MR. STUKENBERG: I can still see your screen,
3 but it's Exhibit 28.

4 THE WITNESS: Yeah. And if you're having
5 technical difficulties, I wouldn't mind a five-minute break to
6 grab something to drink.

7 MR. WELMAKER: That's fine.

8 (Break from 3:43 p.m. to 3:57 p.m.)

9 Q. (BY MR. WELMAKER) Okay. So let's go to Exhibit 22.
10 And it's two pages.

11 (Exhibit 22 marked.)

12 Q. (BY MR. WELMAKER) And I'll increase the top half.
13 And then let me know when you're ready to increase the bottom
14 half.

15 A. I'm ready. Okay. Okay.

16 Q. All right. So this is JD Kinsey at the bottom:
17 Here's the weekly update as well as some documentation received
18 this week. The Bates stamp on this is 1870.

19 MR. WELMAKER: And so, Will, try to make you
20 feel good, but you're still gonna object. So here's the
21 document. It's a spreadsheet produced in native format 1871.
22 And then 1871 is one of the ones I just emailed because it's
23 too big for me to PDF. So can y'all pull that up on your own
24 screens and we can walk through it?

25 A. Are we supposed to be looking at 1871, or which one

1 would you like to look at?

2 Q. (BY MR. WELMAKER) Yes. 1871 and it's a native
3 spreadsheet. Are you able to pull it up?

4 A. I'm trying. Okay.

5 Q. If you can't, I can try to share my computer screen,
6 although I'm not sure --

7 A. I've got it.

8 Q. Okay.

9 MR. WELMAKER: Will, do you have it?

10 MR. STUKENBERG: Pull it up, and I'll just go
11 ahead and lodge my objection to the extent this is not the
12 actual exhibit to the email.

13 MR. WELMAKER: Even though it is.

14 MR. STUKENBERG: I follow its numbering is
15 sequential, but go ahead and object just in the event that it's
16 not.

17 MR. WELMAKER: Okay.

18 Q. (BY MR. WELMAKER) Okay. So the email that it's
19 attached to is JD Kinsey saying, Here's the weekly update as
20 well as some documentation received this week dated January 21,
21 2018.

22 So what this -- it's got tabs at the bottom.
23 And the first tab I'm gonna click on -- well, at the top it
24 says, Mammoth-Maldonado-FED 1871 Confidential. That's what the
25 spreadsheet title is. Then I'm going to the first tab on the

1 left that says Corrections Needed 1/26/18.

2 MR. WELMAKER: Does everybody see that?

3 A. Yes.

4 MR. WELMAKER: Will, do you got it?

5 MR. STUKENBERG: Yes.

6 Q. (BY MR. WELMAKER) Okay. So -- and I went into the
7 properties to see who originated it. For what it's worth, it
8 says -- I'm not gonna ask about this. Under Properties under
9 Summary it says, Author: Alex Kalman. Under Statistics, it
10 says: Created Thursday, January 4, 2018. For what all that's
11 worth.

12 Anyway, so I'm looking at Corrections Needed,
13 1/26/18. Have you seen a spreadsheet like this before,
14 Mr. Layton?

15 A. I've seen a similar version, yes.

16 Q. Okay. So it looks like we've got about 15 or so
17 people. These are all 5 Star's showing days worked. Everybody
18 worked 12, except one person worked 13. The classification for
19 each is provided. The rate is provided. For example, Jason
20 Engle is noted as a \$1,000 day rate. The day rate adjustment
21 amount is needed or that -- I think is what they're saying. In
22 Column I, that's the day rate adjustment that needs to be made.
23 And then description of the issue, Day rate adjustment amount
24 needed equals did not work entire two-week period in PR.

25 MR. WELMAKER: Does everybody see what I'm

1 talking about?

2 A. Yes.

3 MR. STUKENBERG: To the spreadsheet you're
4 referencing?

5 MR. WELMAKER: Yes. In native 1871. Under the
6 tab that says Corrections Needed, 1/26/18.

7 Q. (BY MR. WELMAKER) So Mr. Layton, are these all going
8 to be folks that didn't work a full two-week period that didn't
9 get their -- I've blanked out on the term -- their promised
10 rate. I know you don't like that term. What do you use?
11 Targeted. Targeted.

12 So these people because they didn't work a full
13 two weeks are short the amounts in Column I, and the -- this
14 document that's being distributed by JD Kinsey saying, They all
15 need to have a day rate adjustment to get their pay up to the
16 targeted amount for a two-week period.

17 MR. STUKENBERG: Objection, form.

18 Q. (BY MR. WELMAKER) Do you agree with what I've said,
19 Mr. Layton?

20 MR. STUKENBERG: Objection, form.

21 Q. (BY MR. WELMAKER) If not, tell me what you think
22 this shows.

23 A. So I think from a high-level perspective, this is
24 indicative that the process of identifying the linemen and when
25 they were working or not working was effective, meaning that

1 you can see that you've got looks like 19 linemen that were
2 identified on this particular tab that worked a short pay
3 period. So my takeaway is that the processes in place to
4 identify who was working or not working or people rolling on or
5 off the island were effective. Secondly, this tab
6 references, you know, the testimony that I gave earlier
7 relative to discussion starters. So this would identify those
8 employees that worked a short pay period and then serve as, you
9 know, a conversation starter with operational management for
10 that operational management to be able to approve a
11 discretionary bonus if they so desire.

12 Q. Okay. But it is identifying people who work short
13 weeks and as a result are short on their pay from their
14 targeted amount, right?

15 A. Well, they're not short on their pay. There is a
16 difference between the targeted earnings based upon an
17 estimated number of hours over an entire work week. And the
18 result is the same result as you would see of any hourly
19 employee that doesn't work the budgeted estimated, however you
20 phrase that, number of hours in a work week. So it's merely a
21 function of hours and an hourly employee.

22 Q. Okay. So the next tab, Corrections Needed, 1/9/18.
23 These are all 5 Star employees all noted as being day rates.
24 And the description of the issue is provided.

25 Again, it seems to me to be the same as Tab 1.

1 And I assume, Mr. Layton, you're just gonna say this is a
2 conversation starter as to whether an adjustment needs to be
3 provided, right?

4 MR. STUKENBERG: Objection, form.

5 A. Again, this was a tool utilized by the payroll and
6 operations team to generate discussions.

7 Q. (BY MR. WELMAKER) All right. The next tab,
8 Corrections Needed, 1/12/18, same type of situation. These are
9 all 5 Star folks. And description of the issue generally
10 appears to be employee did not work a full period. Time is
11 entered by mistake, not able to approve time. The next -- do
12 you disagree with that, Mr. Layton?

13 MR. STUKENBERG: Objection, form.

14 A. What was the question?

15 Q. (BY MR. WELMAKER) I'm just trying to generally
16 describe it.

17 A. The document states what it states, so the data that
18 is reflected in the document is whatever is in there. In
19 regards to process, I've covered that ad nauseam.

20 Q. Okay. And then the next term is Higher Power terms
21 PR, so I guess they've either resigned or been terminated and
22 as a result, they've worked a short week. And again, I guess
23 the document speaks for itself. I don't have any further
24 questions about that.

25 All right. And then we're going to pull up my

1 last -- we're going to go to Exhibit 23, and I'm gonna enlarge
2 it. And then --

3 MR. STUKENBERG: Did I hear you say this is your
4 last exhibit?

5 MR. WELMAKER: No. But I am cutting out a
6 ridiculous amount of exhibits, so...

7 It's my last native exhibit.

8 (Exhibit 23 marked.)

9 Q. (BY MR. WELMAKER) So this is Exhibit 23. Tell me if
10 you need -- tell me when you need to move it.

11 A. I'm ready.

12 Q. Actually, I think I can get -- all right. Let's just
13 do 24. It's a longer one so we don't have to go into two.
14 Tell me when you're ready to move it.

15 A. I'm ready.

16 Q. Okay. I'm moving it to the second page.

17 A. Okay.

18 Q. And then the last page is copy of hourly rate
19 conversions. So I'm going to -- so this is 23. I lost screen
20 sharing. Well, we're not going to screen share for the native
21 anyway, so let's just try to pull that up. And it's the
22 last -- the last native spreadsheet.

23 MR. STUKENBERG: 2018?

24 MR. WELMAKER: Hang on a second. I'm trying to
25 pull it up. Yeah, 2018.

1 MR. STUKENBERG: Okay. I'll go ahead and object
2 to the extent that 2018 native is not actually the attachment
3 to the exhibit in 24. But go ahead and ask your questions.

4 Q. (BY MR. WELMAKER) All right. So what I did, I
5 skipped down to Exhibit 26, which is 2017. It's -- Exhibit 26
6 is Missy asking for the mathematical explanation. Then Beagle
7 saying, Please find attached Excel file, which is what we're
8 gonna look at.

9 (Exhibit 26 marked.)

10 Q. (BY MR. WELMAKER) He explains basically how it's
11 being calculated. 2017 is the second page of that, and then
12 the spreadsheet is Mammoth-Maldonado-FED 2018.

13 So Mr. Layton, do you have a copy of that? Are
14 you able to pull it up?

15 A. The Excel file, yes.

16 Q. The one that says 2018 on it?

17 A. Yes.

18 Q. All right. Now my computer is frozen. So I'm gonna
19 stop the share for a second. That will help.

20 Okay. So Mr. Layton, do you know what the
21 spreadsheet is that we're looking at?

22 A. Yes. I've seen it before.

23 Q. Okay. And this is native spreadsheet 2018.
24 Basically, it is Mr. Beagle's explanation as to how the hourly
25 and targeted or budgeted day rates were.

1 MR. STUKENBERG: Objection, form.

2 A. Are you asking me whether I agree with that or not?

3 Q. (BY MR. WELMAKER) Yes.

4 A. Or what's the question?

5 Q. Well, what do you -- what is your take on what this
6 spreadsheet is? What is it showing you?

7 A. So this is the spreadsheet that Mr. Beagle shared
8 with Mr. Broussard in relation to seeking advice on a compliant
9 plan. Mr. Broussard ultimately approved the mechanics of this
10 spreadsheet along with deriving an hourly rate from a budget.
11 So that was discussed in depth with Mr. Broussard in regards to
12 whether or not it was compliant to derive an hourly rate based
13 on a budgeted amount.

14 We utilized that advice, input the days of the
15 week, the hours per day, compared that to the budget. And as
16 you see, we get hourly rates in Column K. And if you take
17 these hourly rates and look at the pay stubs, you'll see that
18 we implemented these hourly rates based on the advice of
19 Broussard.

20 If one were to further take these check figures
21 and remove some of the rounding, you'd see that it would agree
22 to the gross weekly pay for full work weeks such that the team
23 implemented the pay scale as approved by Mr. Broussard.

24 Secondly, you'd see that on the first sheet
25 if we wanted to derive a day rate, we certainly could have, and

1 explored that, that would get relatively close to the budgeted
2 amounts. The operational team did not want to implement a day
3 rate plan and advised that they wanted to implement an hourly
4 plan, which is what was ultimately implemented and reflected in
5 the earnings statements of the claimants.

6 Q. Okay. So Columns N through Q are what a true day
7 rate plan would look like with true overtime based on that
8 plan, correct?

9 A. If you look at the -- if you look at the first sheet,
10 sheet one with the Parenthetical 2, you can see that in order
11 to live within the budgeted amounts, it's possible to derive
12 day rates that would get close to the budgeted amounts.

13 Q. Yeah. And that's using total hours per day of 12,
14 which is not what you used, right?

15 A. Again, that's showing the possibility of deriving a
16 day rate. So the hours --

17 Q. Sure. But that's not -- that's not what you used,
18 so, I mean, what's the point of you talking about it?

19 A. We --

20 Q. You used 16 hours a day, right?

21 A. Maybe we can talk about it if you'd let me finish my
22 answer, yet again.

23 Q. Did you use 12 hours a day for purposes of
24 calculation of your hourly rates?

25 A. In one of the iterations, we used 12 hours. And we

1 ran through the calculations with Mr. Broussard. We also
2 discussed those options with the operational team in regards to
3 hourly versus day rate plan. So you see 12 hours on the first
4 sheet. The operations team didn't desire to further pursue a
5 day rate plan, so we pivoted all of our discussion to an hourly
6 and overtime plan.

7 Ultimately, following the pivot to an hourly and
8 overtime plan, we ended up landing on 16 hours per day based on
9 some of the characteristics that I described earlier today in
10 regards to processes, to capture report and pay any hours that
11 exceeded 16 hours per day.

12 Q. Okay.

13 A. So what you see here at 16 hours per day are those
14 calculations approved by Mr. Broussard and the discussions with
15 the operations team that followed.

16 Q. And we don't have any emails from Mr. Broussard
17 saying I approve of this or I've gotten this spreadsheet and
18 here are my thoughts, do we?

19 A. We --

20 MR. STUKENBERG: Objection, form.

21 A. -- discussed this with Mr. Broussard. There are
22 several emails that have been produced in regards to
23 conversations with Broussard including the circulation of an
24 iteration of this spreadsheet.

25 Q. (BY MR. WELMAKER) An iteration, but is it this exact

1 spreadsheet?

2 A. It's very similar to this spreadsheet. The
3 iterations of the spreadsheet were discussed in detail with
4 Mr. Broussard on a Sunday afternoon call that I personally
5 participated in.

6 Q. Did you take any notes from that call?

7 A. No, sir, I did not.

8 Q. Okay. So you used 16 hours a day ultimately,
9 correct?

10 A. Yes.

11 Q. And that's the number of hours you expected your
12 employees or 5 Star, Higher Power employees to work while on
13 the island, correct?

14 A. That's not how I view it. So if you look at it
15 through my lens, we knew that the employees would work less
16 hours. We compensated them for 16 hours per day for working or
17 being available to work knowing that at some points we may get
18 close to the 16 hours, but more times than not, they would work
19 less than 16 hours.

20 Q. All right. So was the 16 hours, like, a scheduled
21 plan?

22 A. I don't understand what the "scheduled plan" means.

23 Q. You scheduled everyone for 16 hours whether it was
24 going to be actual work or work plus on-call time, correct?

25 A. I don't know what that means. We set the 16-hour

1 threshold based on the fact that 16 hours is fairly commonplace
2 in named storms. Secondly, we had process and procedures in
3 place through the supervisors to identify any hours in excess
4 of 16 hours based on past experience and their knowledge of the
5 DOT regs requiring an eight-hour reset.

6 Q. Okay. So you didn't just pull the 16-hour figure out
7 of thin air. That's basically what storm work is, right?

8 A. I don't understand what the context is. In named
9 storms, it's not uncommon to have 16-hour shifts, if you will.
10 We pulled the 16 hours based on conversations with management
11 and our desire to compensate employees for all hours worked or
12 available to work, combined with processes that we had in place
13 to capture, report and pay for any hours in excess of 16 hours
14 per day.

15 Q. Okay. So it was basically a 16-hour shift, right?

16 A. It was 16 hours that we set as a threshold or an
17 expectation for employees to work or be available to work.

18 Q. Okay. And it -- you didn't use the 12-hour figure
19 ultimately; is that correct?

20 A. That's correct.

21 Q. Okay. And so if we look over at sheet one, the tab
22 that says Sheet One, in Columns N through Q, that shows what
23 you would have to pay for the same job classifications if you
24 were paying on a pure day rate, correct?

25 A. Not necessarily. So you're assuming that they're

1 paid a day rate, and you're assuming that the budgeted amounts
2 would be those rates. So I'm not sure I follow your --

3 Q. All right. Why don't you tell me what you think N
4 through Q is. What is it?

5 A. N appears to be a calculation of the total for a week
6 divided by hours in the week. O is half that. P is a
7 calculation of overtime hours times Column O. Column Q is
8 Column P plus Column L.

9 Q. So tell me, what is column Q? What does it
10 represent?

11 A. Column P plus Column L.

12 Q. Is it the total amount that would be due if you paid
13 overtime on a day rate basis?

14 A. If you assume that what was implemented were these
15 daily amounts, these amounts were not implemented on -- these
16 budgeted amounts were not implemented on a day rate plan. They
17 were --

18 Q. If you -- go ahead.

19 Mr. Layton, do you understand how a conversation
20 works? It's not always going to end perfectly. And just
21 because I start talking doesn't mean I'm trying to purposely
22 interrupt you. It's just a part of a conversation.

23 MR. STUKENBERG: Well, Doug, this isn't a
24 conversation. It's a deposition. It's important that the
25 transcript be clean.

1 MR. WELMAKER: I don't think Mr. Layton is
2 worried about a transcript. He's getting personally offended,
3 and I'm not trying to do that.

4 A. I'm following your rules of not talking over each
5 other.

6 Q. (BY MR. WELMAKER) Forget about my rules. Okay? I'm
7 just trying to get information from you. And I'm not trying to
8 be rude. So if I jump in, it's just because that's a mistake.
9 I mean, I didn't follow polite procedure, but I wasn't doing it
10 on purpose. Sometimes I think you're done, and you're not
11 done.

12 A. Okay.

13 Q. I'm not trying to do this on purpose.

14 A. Nobody accused you of doing it on purpose.

15 Q. Would you agree that Column Q is what you have to pay
16 if you did a pure day rate plan with overtime?

17 A. Based on hypotheticals, it's possible, but that's not
18 what was implemented. So what was implemented was an hourly
19 and overtime plan that we can see on the earnings statements.

20 Q. Correct. But it looks like somebody calculated what
21 your exposure would be if you did a pure day rate plan,
22 correct?

23 MR. STUKENBERG: Objection, form.

24 A. What that calculated represents some historical
25 calculations. They're not calculating exposure under your

1 concocted speculation. So this was an iterative spreadsheet
2 that was bounced back and forth. You can tie these hourly
3 rates to the earnings statements and see that what
4 Mr. Broussard advised upon and what we implemented, in fact,
5 agrees to the hourly rates that are reflected on the earnings
6 statements of your claimants.

7 Q. (BY MR. WELMAKER) It's a lot cheaper to do it the
8 way that you did it as opposed to doing it on a pure day rate
9 basis, isn't it?

10 A. What we implemented was based on the advice of
11 Mr. Broussard. Had we wanted to derive day rates that fell
12 within the budgeted amounts, you can see through the mechanics
13 here that we were clearly capable of doing that and decided not
14 to. We decided to implement an hourly plan, and you can
15 clearly see that on the earnings statements.

16 Q. So you did an hourly plan even though you didn't
17 track hours; is that right?

18 MR. STUKENBERG: Objection, form.

19 A. We tracked hours. Your statement belies the evidence
20 that you have. You can see hours on the time detail reports
21 for each of your claimants.

22 Q. (BY MR. WELMAKER) Yeah, it's the same hour every
23 time. 16 hours every single time, right?

24 A. What's reflected is what's reflected. Your
25 statements are not productive.

1 Q. I'm here to be productive, man. That's my main goal,
2 Mr. Layton.

3 On exhibit -- oh, my gosh. Let me try to
4 reconnect.

5 On Exhibit 26, which is what we were just
6 looking at, at the top, Missy Davis says, This is stupid, like
7 so stupid.

8 Did anybody ever talk to her and ask why she
9 thought this plan was stupid?

10 A. I don't think she's stating that the plan is stupid.
11 I think the context is, is that complying with the FLSA and
12 paying the employees hourly is complex. It takes a lot of
13 work. So if you put yourself through -- you know, look at it
14 through her lens, she's saying this is complicated to input the
15 hours and pay -- pay the employees on an hourly basis. It
16 would be really easy to just plug in a day rate and be done
17 with it. And that's not what was implemented. So through her
18 lens, it's a lot of additional work to track and input hours
19 for each employee every day.

20 Q. Well, she's not tracking hours. She's putting 16 for
21 everybody, right?

22 A. That's tracking hours. And clearly, the
23 communication stream in regards to the days worked was
24 functional because you can see in the Excel spreadsheets where
25 it's routinely captured where employees worked a short week.

1 So the ability to track and communicate whether or not an
2 employee is working in Puerto Rico clearly was effective based
3 on the spreadsheets that were circulated.

4 Q. All right. I'm gonna show you Exhibit 24. Again,
5 this is Missy asking for the mathematical explanation. Above
6 that is Jeff Beagle providing the spreadsheet that we just
7 looked at. Above that is Missy saying, What happens if they
8 come home on a Tuesday or something? And the next page, on
9 November 14, Mr. Kalman is saying, We'll be in touch with our
10 management team on how to handle this.

11 Do you see that?

12 A. Yes.

13 Q. Then Jeff Beagle says, I think we just run a gross-up
14 at the end of their hitch and pay the balance on the next
15 check. And he asks Mr. Kalman his thoughts. And Mr. Kalman
16 says, Sounds good to me.

17 So are they contemplating just running a
18 gross-up on those periods of time where an employee works less
19 than a full week, the full two-week pay period?

20 A. It would appear they're having a discussion based on
21 my knowledge of what's happening at the time about what happens
22 in a short week. And what happened was is the team identified
23 the short weeks. They utilized the Excel file, an example of
24 which we reviewed earlier as a conversation starter, to, one,
25 make sure that we had proper reporting of days worked for the

1 employees secondarily to research and address other issues
2 associated with payroll. And then also to serve as a
3 conversation starter with general foremen and superintendents
4 in regards to whether or not they wanted to make any
5 discretionary bonus payments within their budgeted labor
6 amounts.

7 Q. Where does it say that I think we should consider
8 discretionary gross-ups on either of these two emails?

9 A. You're not going to necessarily see that in these
10 emails. What you can see is clearly the documents in evidence
11 of what was implemented. So we can see through reviewing the
12 Excel files as well as the underlying earnings statements as
13 well as my inquiry from superintendents of the implementation
14 of discretionary bonus payments on occasion relative to some of
15 these short weeks and the criteria upon which they were paid
16 from time to time.

17 Q. Going to Exhibit 58, this is part of Jorge Luis
18 Rivera's file.

19 (Exhibit 58 marked.)

20 Q. (BY MR. WELMAKER) Bates-stamped 763. At the top it
21 says, 2018 Mammoth Energy Services Enrollment Change Form. And
22 it looks like Mammoth Energy Services, Inc., is providing
23 health benefits; is that correct?

24 A. No, that's not correct. The health benefits were
25 provided by this individual's employing entity. It's a

1 multi-employer plan.

2 Q. Why is Mammoth Energy Services, Inc., at the top of
3 this written out as well as with their logo?

4 A. It's a form. It states what it states. There's
5 plenty of case law out there about logos and forms and whether
6 or not they're applicable. In this particular case, this
7 employee's benefits would have been provided by his employing
8 entity. They would have paid for those benefits. Again,
9 multi-employer plan.

10 Q. On any of the benefit paperwork, have you seen it say
11 that this is a multi-employer plan?

12 A. I've not reviewed every single piece of paperwork.

13 Q. Have you ever seen it say that, though?

14 A. Again, I've not reviewed it. In my job
15 responsibility, I don't routinely review enrollment forms.

16 Q. All right. The same exhibit, Exhibit 58, Bates 764,
17 2018 Mammoth Energy Services Enrollment Change Form. At the
18 bottom it says, Employee Signature. No mention of anybody else
19 on this page, is there?

20 A. The document states what it states. The benefits
21 were provided by his employer. You can see that his employer
22 withheld any premiums or benefits from his earnings statements
23 and his employer paid for those benefits.

24 Q. All right. And Mammoth Energy Services Spousal
25 Surcharge Affidavit, that's Exhibit 58, Bates 765. Again, no